No. 89-1474-CFX
Status: GRANTED

Title: McDermott International, Inc., Petitioner
v.
Jon C. Wilander

Docketed:
March 20, 1990

Court: United States Court of Appeals
for the Fifth Circuit

Counsel for petitioner: Doyle,James B.

Counsel for respondent: Jones Jr.,J. B.

032190 Advised counsel's sec. re cover

Entry	Date	Note	Proceedings and Orders
1	Mar 20 1990	G	Petition for writ of certiorari filed.
2	Mar 26 1990		Letter from petitioner in compliance with Rule 29.1 filed
3	Apr 25 1990		DISTRIBUTED. May 10, 1990
4	May 1 1990	D	Application (A89-764) for a stay pending disposition of petition for writ of certiorari, submitted to Justice White.
5	May 1 1990		Application (A89-764) denied by Justice White.
6	May 2 1990	P	Response requested -- JPS. (Due June 2, 1990)
7	May 24 1990		Brief of respondent Wilander, Jon in opposition filed.
8	May 29 1990		REDISTRIBUTED. June 14, 1990
9	Jun 18 1990		Petition GRANTED. limited to Question 1 presented by the petition.
			**********
10	Jun 26 1990		Record filed.
		*	Certified copy of original record received.
11	Jun 29 1990		Record filed.
		*	Certified copy of C.A. proceedings received.
12	Aug 2 1990		Brief of petitioner McDermott International filed.
13	Aug 13 1990		Joint appendix filed.
14	Aug 29 1990		Brief of respondent Wilander filed.
15	Aug 31 1990		Brief amicus curiae of Association of Trial Lawyers of America filed.
16	Sep 4 1990		CIRCULATED.
18	Sep 4 1990	X	Brief amicus curiae of Louisiana Trial Lawyers Association filed.
17	Sep 28 1990	X	Reply brief of petitioner McDermott International, Inc. filed.
19	Oct 19 1990		SET FOR ARGUMENT MONDAY, DECEMBER 3, 1990. (3RD CASE)
20	Dec 3 1990		ARGUED.

89- 1474 (1)

No. _____

In The

Supreme Court of the United States

October Term, 1989

McDERMOTT INTERNATIONAL, INC.

Petitioner,

versus

JON C. WILANDER

Respondent.

On Petition For Writ Of Certiorari To The U.S. Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI OF McDERMOTT INTERNATIONAL, INC.

JAMES B. DOYLE
VOORHIES & LABBE'
P.O. Box 3527
Lafayette, LA 70502
Telephone: (318) 232-9700

Attorney for Petitioner, McDermott International, Inc.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

45

QUESTIONS PRESENTED FOR REVIEW

I.

When a worker is injured on a fixed platform in the Persian Gulf, but claims status as a seaman under the Jones Act, 46 U.S.C. 688, by alleging connection to an American-flagged vessel, how is the United States District Court to determine which of the conflicting definitions of status constitutes American law, specifically, whether transportation-related employment functions are a pre-requisite to status under the Act?

II.

Did the United States Court of Appeal, Fifth Circuit, err as a matter of law, in concluding Respondent, who had only a transitory connection with the only American vessel in an operating group of vessels, had established sufficient connexity with that vessel to impose American Law on a cause of action arising from Respondent's work as a painter foreman on an offshore platform in the Persian Gulf?

LIST OF PARTIES

The following are the parties to this proceeding:

Jon C. Wilander
Plaintiff-Respondent

McDermott International, Inc.
Defendant-Petitioner

J. B. Jones, Jr., Jennifer Jones Bercier,
and Michael Bercier of the law firm of
Jones, Jones & Alexander, P. O. Drawer M,
Cameron, Louisiana 70631
Attorneys for Plaintiff-Respondent

James B. Doyle of the law firm of
Voorhies & Labbé, P. O. Box 3527,
Lafayette, Louisiana 70502
Attorney for Defendant-Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

STATUTES

TABLE OF AUTHORITIES – Continued

OTHER AUTHORITIES

DECISIONS BELOW

The decision of the United States Court of Appeal, Fifth Circuit, is reported at 887 F.2d 88 (5th Cir. 1989).

Unreported decisions of the District Court bearing on this issue, including the Court's ruling on Relator's Motion for Judgment on Findings of the Jury; and on Relator's Motion for Judgment N.O.V. are reproduced in the appendix.

JURISDICTION

This Petition seeks review of the judgment of the United States Court of Appeal, Fifth Circuit, entered on the 30th of October, 1989. After its entry, both sides petitioned for rehearing and/or rehearing *en banc*. On the 16th of January, 1990, the Court of Appeal denied Relator's Petition for Rehearing and issued its mandate. On the 31st of January, 1990, Relator petitioned the Court of Appeal for a recall and stay of mandate, pending filing in this Court. The Court of Appeal denied Relator's Petition on the 26th of February, 1990.

This Petition is filed timely pursuant to 28 U.S.C. 2101(c). This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1254(1).

STATUTE PRESENTED FOR REVIEW

The Jones Act, 46 U.S.C. 688(a):

(a) Application of Railway Employee Statutes; Jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

STATEMENT OF THE CASE

Jon Wilander, a resident of the State of Louisiana, brought suit on August 2, 1984, against McDermott International, Inc., at that time a Panamanian corporation with its principal place of business in Brussels, Belgium, seeking damages under the Merchant Marine Act, 46 U.S.C. 688, and the General Maritime Law, and invoking the maritime jurisdiction of the United States District Court for the Western District of Louisiana.

In his original Complaint, although alleging status as a seaman, Wilander claimed attachment to no particular

vessel. Wilander had worked as a paint foreman offshore in the Persian Gulf. His company had a contract with the Qatar General Petroleum Corporation (QGPC), which owned various platforms in a production field offshore Qatar.

Wilander's employment required him to supervise a crew of workmen, primarily Filipinos. His work consisted of sandblasting, and then painting, various fixtures and piping located on the fixed platforms.

When Wilander was on a particular job assignment which required him to remain offshore overnight, he slept, ate, and planned his job activities aboard the McDermott Derrick Barge *DB-9*, a Panamanian-flagged vessel owned by McDermott International, Inc. Wilander was given the use of the M/V *GATES TIDE*, an American-flagged crew boat outfitted for use on this job as a "paint boat," for five days of the total 15 months he spent on the job. The *GATES TIDE*, owned by Tidex International, Inc. (no relation to McDermott), was loaded with sand pots, an air compressor, a backhoe, and various other pieces of equipment used by Wilander's crew. The *GATES TIDE* was also used to transport Wilander and his men throughout the production field for the purpose of taking inventory on the storage barges; transporting the crew to and from the *DB-9;* and, when it was tied up, to serve as Wilander's primary support station while his crew was on the platform performing the manual labor connected with their activities. Wilander's job was supervisory. He would assign work duties and check the work when it was done.

The *GATES TIDE* was time-chartered to McDermott International, Inc. It first came on this job on the 29th of

June, 1983, five days before Wilander's accident. During that time, Wilander was assigned no navigational duties aboard the *GATES TIDE*, which functioned as his support ship.

Wilander was injured when he was asked to inspect a pipe on the third level of a fixed platform to determine if it was leaking. In the course of performing this task, a 3/8-inch bolt serving as a plug in the pipeline blew out under pressure, striking Wilander in the head.

The trial in the district court was bifurcated, with the jury first deciding issues relating to seaman status. Given a choice of four possibilities (the fixed platform, the Panamanian-flagged *DB-9*, the American-flagged *GATES TIDE*, and an unidentified group of vessels known as the "Tidex fleet"), the jury chose all four, finding Wilander was connected to all by virtue of his employment.

Only Wilander's connection with the *GATES TIDE* put him arguably within the scope of coverage of the Jones Act. Thus, that connection was examined extensively by motions to the court and was the focus of much argument in the Fifth Circuit.

The Fifth Circuit concluded its test of substantiality voiced in *Barrett v. Chevron USA, Inc., infra*, applied as "American Law." Then, it concluded Wilander had presented "sufficient evidence to support the jury's finding" on status, but he would not meet the transportation function requirement of other Circuits. The judgment of the trial court on status was affirmed and made final, while issues of liability and damages were remanded for trial on unrelated grounds.

It is to that decision this Petition is directed.

ARGUMENT

In the last three years, this Court has twice denied petitions for review by writ of certiorari involving Jones Act status questions, with two justices dissenting. *Lormand v. Aries Marine Corporation, et al*, 820 F.2d 1222 (5th Cir. 1987) cert. den. 484 U.S. 1031, 108 S.Ct. 739, 98 L.Ed.2d 774 (1988); *International Oilfield Divers, Inc., et al. v. Lonnie Pickle, et al.*, 791 F.2d 1237, 795 F.2d 1009 (5th Cir. 1986) cert. den. 479 U.S. 1059, 107 S.Ct. 939 (1987). Each petition came from the Fifth Circuit, which applies a test for status which does not take into account activities related to the transportation function of the vessel, i.e., those related to the navigation of the vessel as a means of transport over water rather than its "special mission." Other Circuits use aid to navigation as a determining factor.

The two transportation/navigation cases most frequently cited are *Johnson v. John F. Beasley Construction Company*, 742 F.2d 1054 (7th Cir. 1984); and *Simko v. C&C Marine Maintenance Company*, 594 F.2d 960 (3rd Cir. 1979). The non-transportation cases are *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959), and the *en banc* decision *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986).

The split among the Circuits is exclusively over whether or not to include within the scope of Jones Act coverage those persons who, while required to be aboard ship in connection with their employment and arguably advancing in some way the mission of the ship, have no part to play in its transportation/navigation function.

The split of authorities is magnified here, because Wilander would not be covered but for the jury's finding of an employment-related connection with an American vessel, without which Wilander would not have had sufficient American contacts to justify the imposition of American law, including the Jones Act.

The Court has clearly enunciated the circumstances under which American law applies to a maritime transaction. *See, Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970); *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953). The Fifth Circuit has distilled the Court's decisions to a determination that the flag of the vessel is the single most determinative factor in deciding which law to apply. *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159, 824 F.2d 972 (5th Cir. 1987), cert. den. 484 U.S. 977, 108 S.Ct. 488, 98 L.Ed.2d 486 (1987) [affirmed other grounds, 868 F.2d 717 (5th Cir. 1989), cert. den. 110 S.Ct. 150, 107 L.Ed.2d 108 (1989)].

Thus, the following is clear: (1) Wilander has a Jones Act cause of action if, and only if, he has a connection with an American vessel; (2) Wilander's connection with that American vessel must be determined in accordance with American law; (3) under the *Robison-Barrett* test, Wilander presented sufficient evidence for the case to go to the jury on seaman status; and (4) under the test of other Circuits, utilizing the "transportation function" analysis, he did not.

Background

Since its adoption in 1920, the Jones Act has provided benefits to members of the crew of a vessel more expansive than those granted under other worker's compensation schemes, including the LHWCA (33 U.S.C. 901, et seq.). Much of the creative tension over differing definitions of status has resulted from the interplay between the Jones Act definition and that of the LHWCA, 33 U.S.C. 903(b)(3), which excludes from the scope of the Act all those who are "members of a crew." Thus, mirror-image precedent can be reviewed.

In *South Chicago Coal & Dock Company v. Bassett*, 104 F.2d 522 (7th Cir. 1939), 309 U.S. 251, 60 S.Ct. 544 (1940), a worker who "performed such additional tasks as throwing the ship's rope in releasing or making the boat fast" but "performed no navigation duties"; "had no duties while the boat was in motion . . . [,] slept at home and boarded off ship" was determined to be covered under the LHWCA rather than the Jones Act (309 U.S., at p. 255; 60 S.Ct., at p. 540). The determinative factor was whether this engine mechanic performed navigational duties:

> [T]he general sense of the word crew is "equivalent to ship's company" . . . in *The Bound Brook, D.C.*, 146 F. 160, 164, it was said that "when the 'crew' of a vessel is referred to, those persons are naturally and primarily meant who are on board her aiding in her navigation. . . . Judge Howe in the *Buena Ventura, D.C.*, 243 F.2d 97, 799, thought that statement was a fair summary, and, in his view, one who served the ship "in her navigation" was a member of the "crew" . . . . *Bassett*, 309 U.S. at p. 259; 60 S.Ct., at p. 548.

Citing many of the same authorities, Justice Douglas four years later expanded the definition by finding a bargeman who lived, ate, and slept on a barge a seaman, even though his duties were those of a laborer. *Norton v. Warner Co.*, 321 U.S. 565, 64 S.Ct. 747 (1944). In so doing, the oft-quoted expansive interpretation of "crew" appears:

> . . . [N]avigation is not limited to "putting over the helm." It also embraces duties essential for other purposes of the vessel. Certainly members of the crew are not confined to those who can "hand, reef, and steer." *Norton*, 321 U.S. at p. 572; 64 S.Ct. at p. 751.

As a prelude to *Robison*, the Court in 1957 found a dredge company's employee who lived onshore, but performed such tasks aboard the dredge as making soundings; washing and cleaning navigational lights while the dredge was in transit; but, was injured on land incident to his employment, presented sufficient facts to have a jury determine his status:

> . . . [b]ecause there was testimony introduced . . . tending to show that he was employed almost solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have a significant navigational function when the dredge was put in transit. . . . *Senko v. LaCrosse Dredging Corporation*, 352 U.S. 370, 373-4; 77 S.Ct. 415, 417-18.

The Court's *per curiam* decision in *Gianfala v. Texas Company*, 357 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775, relied on *inter alia*, *Bassett, supra; Summerlin v. Massman Construction Company*, 199 F.2d 715 (4th Cir. 1952); *Wilkes v. Mississippi River Sand & Gravel Company*, 202 F.2d 383 (6th

Cir. 1953); and *Gahagan Construction Corporation v. Aramao*, 165 F.2d 301 (1st Cir. 1948). From these citations, and the Court's opinion in *Senko*, which cited the *Gianfala per curiam* opinion, the Fifth Circuit extrapolated its familiar *Robison* test:

> [T]here is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips. 266 F.2d 769.

That test did not do away with the requirement that a worker be involved in "navigation;" it merely liberalized the definition of navigation to include all those functions of the vessel performed in maritime commerce.

The "special function" feature of the *Robison* test has been used to extend coverage under the Jones Act to workers not traditionally found within its ambit, and who are by no usual definition of the word a member of a "ship's company" or "crew." However, the twin requirements of permanency and contribution to the special function of the vessel restricted the circumstances to which the expansive definition could be applied. For example, an oilfield worker such as Robison is a "member of the crew" primarily because his job requires him to live, eat, and sleep aboard a structure whose only use

requires it to float on water. A wireline operator, who is at best a visitor to this same facility, but without whose expertise the "special mission" of the oil rig could not be accomplished, is not. Schoenbaum, *Admiralty and Maritime Law* (1987), at pp. 177-180.

The *en banc* decision in *Barrett* concerned itself more with permanency than function, and, thus, *Barrett* is usually cited for the proposition that the substantiality of contacts with a vessel are the determining factor upon which a fact finder can make its determination. *Id.*, at p. 179.

The permanency requirement has restricted a person in essentially the identical fact scenario as Wilander's from seaman status. A painter-foreman who was employed as a ship repairman, sandblasting and painting equipment aboard a semi-submersible drilling rig, who spent 60 percent of his time sandblasting and painting vessels, and who had stayed aboard that semi-submersible rig for seven days prior to his accident, was covered under the ship repairman's provision of the LHWCA, and was not, therefore, a "member of the crew." *New v. Associated Painting Services, Inc.*, 863 F.2d 1205 (5th Cir. 1989). [See also *Nolan v. Coating Specialities, Inc.* 422 F.2d 377 (1970), decided under the *Robison* formula.]

Current Fifth Circuit Cases

The current tension in the Fifth Circuit is highlighted by the comparison of such cases as *Pizzitolo v. Electro-Coal Transfer*, 812 F.2d 977 (5th Cir. 1987), cert. den. 484 U.S. 1059, 108 S.Ct. 1013, 98 L.Ed.2d 978 (1988), and *LeGros v. Panther Services, Inc.*, 863 F.2d 345 (5th Cir. 1988). *Pizzitolo*

stands for the proposition that a person included within the ambit of coverage under the LHWCA cannot, by definition, be a seaman. In reaching that conclusion, Judge Davis, who wrote the majority opinion in *Barrett*, performed an analysis of the history of Jones Act *versus* LHWCA coverage which is clearly designed to narrow the *Robison-Barrett* test, at least to the extent of excluding, as a matter of first principles, statutorily-defined Longshoremen.

Just a year later, Judge Rubin found a worker on a construction barge, who was assigned to maintain the engines and other equipment, covered as a seaman under the *Robison-Barrett* test, primarily, it seems, because of the permanency of his connection to the vessel in question (e.g., he slept and ate on one of the barges of the fleet most nights; he spent 95 to 97 percent of his time on water rather than on land; and his time on land was spent mostly going from one barge job to another). *LeGros v. Panther Services Group, Inc.*, 963 F.2d 345 (5th Cir. 1988), at pp. 347-8.

In *LeGros*, the analysis was directed first to whether the worker met the test under *Robison-Barrett* and not whether he was a statutorily-defined Longshoreman. In so doing, the Court stated explicitly that *Pizzitolo* was not being overruled or modified; rather, it reaffirmed the connection between "member of a crew of a vessel" as defined in 33 U.S.C. 903(b)(3), and the Jones Act. In dissent, Judge Jones, one of the four members of the *Barrett* panel who had adopted the "aid to navigation" test of *Johnson v. John F. Beasley Construction Corporation*, cited *supra*, said LeGros was "basically a repairman and supervisor" who spent most of his time "inspecting and repairing the vessels on which he was employed." *LeGros*, at p. 354.

The Court then decided to sit *en banc* on the factual questions presented by *LeGros*, and directed counsel as follows:

> In addition to briefing the issues raised by the parties and the panel opinion, the Court instructs that counsel should also discuss whether this Circuit should adopt a navigational-function test of seaman status in addition to or substitution for the *Robison* standard. See, e.g., *Simko v. C&C Marine Maintenance Company* [Citation Omitted]. *LeGros*, at p. 355.

The suggestion that such a navigational-function test should be adopted was not required by the facts of *LeGros*, since, arguably, *Pizzitolo* would command the same result. With the Court having sat *en banc* just two years earlier on the same issue, it is nothing short of extraordinary. The adoption of the navigational-function test, in the context of *LeGros*, is clearly needed to provide a "bright line" rule as a substitute for the nebulous substantiality requirements of *Barrett*. Unfortunately, *LeGros* was settled before the *en banc* panel met to hear argument.

Significantly, Judges Jones and Gee, two of the *Barrett* dissenters, sat on the panel in the instant case. Their conclusion:

> The Supreme Court has not, however, held that our Circuit's test is incorrect and that of the Seventh Circuit correct. Absent such a holding by the Supreme Court, we must adhere to our *en banc* decision in *Barrett*, which reaffirmed the validity of the *Robison* test. 887 F.2d 88, at pp. 90-91.

The Law of Other Circuits

Juries traditionally have a hard time determining "substantiality." There is no better example than the finding of the jury in this case, which connected Wilander to every work station he testified he occupied, with the Court utilizing a standard *Robison* charge.

Navigational function embodies clear-out terminology free from semantic problems. It provides a bright line which edges back Jones Act coverage and, thus, furthers the purposes for which the Act was passed by preserving its validity for those intended to be covered.

Although the Seventh and Third Circuit tests are primarily cited as differences from *Robison*, all the other Circuits, to greater or lesser degrees, use the "navigational function" test in a different fashion.

The Second Circuit holds seamen are only those aboard a vessel "naturally and primarily as an aid to navigation." *Salgado v. M. J. Rudolph Corporation*, 514 F.2d 750 (1975). The Fourth Circuit adds the words "in the broadest sense." *Wittington v. Sewer Construction Company, Inc.*, 541 F.2d 427 (1976). The Sixth is likewise, saying a worker "satisfies the 'in aid of navigation requirement' if his duties contribute to the operation of the vessel." *Peterson v. Chesapeake & Ohio Railway Company*, 784 F.2d 732 (6th Cir. 1986).

The Eighth has cited *Robison* as its test. However, it defines a vessel as "virtually any floating structure used for *transport* in navigable waters." *Slatten v. Martin Keeby Construction Company, Inc.*, 506 F.2d 505 (1974). The Ninth

appears to require association with the navigational function of the vessel in *Worthington v. Icicle Seafoods, Inc.*, 774 F.2d 349 (9th Cir. 1984); however, a California district court opinion demonstrates the difficulty encountered citing *Robison*, but requiring navigational connection (although that issue was not dispositive in the cited case). *Buna v. Pacific Far East Line, Inc.*, 441 F.Supp. 1360 (N.D. Cal. 1977).

CONCLUSION

If *Barrett* was intended to clarify, it has confused. If it was intended to create an additional rule, it has failed. That test stands alone in American jurisprudence to allow a person with tangential connection to a vessel to claim status equal to that of the members of the ship's crew. The conflict in the Circuits is not only between the Fifth and Seventh, it is between the Fifth and everyone else. In this case, other than the fact of Wilander's home residence status in the Western District of Louisiana, there is no rational connection between the Fifth Circuit and the situs of Wilander's accident. Thus, there is no ready reason the Fifth Circuit's test should apply to a determination of Wilander's status, save the location of the litigation within its purview. Clearly, one of the driving factors of *Robison* is absent; oil and gas exploration off the Louisiana and Texas Coasts (*Robison*, at p. 780; *Schoenbaum*, at p. 179).

McDermott International, Inc. would have been amenable to service to a Tennessee resident, for example, alleging injury identical to Wilander's, under circumstances identical to his. If the fortuitous placement of this lawsuit had been in Memphis rather than Lake Charles, Louisiana, Wilander would have failed to meet the test for status.

The effect of inclusion of marginal seamen such as Wilander weakens the effect of the Jones Act for those to whom it is intended to apply:

> While the liberal attitude of courts in finding employees of questionable status "seamen" may be commendable when the employee's duties fall into the gray areas, we believe the purpose of the Jones Act is distorted when persons who are obviously not seamen recover damages at the shipowner's expense. If the Jones Act is to retain any limitations on its coverage, we believe the employee's duties with respect to the transportation function of the vessel should define them. We conclude that *when the person's status as a member of a crew is equivocal*, "the work done by [the] employee will be crucial. . . ." *Johnson*, cited *supra*, citing *Braen v. Pfeifer Transportation Company*, 361 U.S. 129, 131; 80 S.Ct. 247-249; 4 L.Ed.2d 191 (1959). (Emphasis added)

The strength of our admiralty law has been in its uniformity. Where doubt exists, decisions upholding the uniformity of maritime law use that criteria as the supreme decision maker. *See, e.g., Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 905 S.Ct. 1772, 26 L.Ed.2d 339 (1970); *Southern Pacific Company v. Jensen*, 244 U.S. 205, 37 S.Ct. 524 (1916); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986); *Chick Kam*

Choo v. Exxon Corporation, 108 S.Ct. 1684 (1988); *Director, OWCP v. Perini North River Associates, et al*, 103 S.Ct. 634, 459 U.S. 297, 74 L.Ed.2d 465 (1983).

In this most important of maritime tort considerations, there is no uniform American law. The time has come to adopt one, on these facts, in this case. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

VOORHIES & LABBÉ
(A Law Corporation)

JAMES B. DOYLE
700 St. John Street
Lafayette, LA 70501
Phone: (318) 232-9700

Counsel for Petitioner, McDermott International, Inc.

APPENDIX 1

Jon C. WILANDER, Plaintiff-Appellee, Cross-Appellant,

v.

McDERMOTT INTERNATIONAL, INC., Defendant-Appellant, Cross-Appellee.

No. 88-4678.

United States Court of Appeals,
Fifth Circuit.

Oct 30, 1989.

James B. Doyle, Edmund E. Woodley, Woodley, Williams, Fenet, Palmer, Doyle & Norman, Lake Charles, La., for defendant-appellant cross-appellee.

J.B. Jones, Jr., Jennifer J. Bercier, Jones, Jones & Alexander, Cameron, La., for plaintiff-appellee cross-appellant.

Appeals from the United States District Court for the Western District of Louisiana.

Before GEE, GARZA and JONES, Circuit Judges:

GEE, Circuit Judge:

The plaintiff in this action was employed by the defendant, McDermott International, Inc., as a "paint foreman" working in the Middle East. The plaintiff was injured when a plug exploded from a pressurized pipe on board a fixed offshore platform on which he was working.

The plaintiff filed suit against the defendant in the Federal District Court for the Western District of Louisiana, alleging that he was a seaman within the coverage of

the Jones Act and seeking punitive damages. The defendant filed a motion for summary judgment on the issue of the ~~plaintiff~~'s status as a seaman and on his entitlement to punitive damages. The plaintiff filed a motion in opposition to the defendant's motion and filed two supporting affidavits. In the second affidavit the plaintiff stated that during his employment with the defendant he spent approximately 70% of his working time aboard some vessel. The district court denied the defendant's motion for summary judgment on the issue of the plaintiff's status as a seaman, but granted the motion on the issue of punitive damages. The district court then determined that the seaman's status issue would be tried to the jury first, followed by a later trial on liability and damages if necessary.

Following the first part of the trial the jury found that the plaintiff had status as a seaman because he was substantially connected to 1) the DB-9, a Panamanian vessel owned by the defendant; 2) the GATES TIDE, an American vessel chartered to the defendant; 3) the fixed platform upon which he was injured, and 4) a group of vessels called the "TIDEX" fleet. The jury further found that the plaintiff contributed to the function of the DB-9 and the GATES TIDE. The defendant moved for judgment n.o.v., and the court denied this motion. The case proceeded to trial before the same jury on the issues of liability and damages. The jury awarded the plaintiff $450,000, including $400,000 for lost past and future earnings. This amount was reduced by 25% for the plaintiff's contributory negligence. The defendant appealed this judgment, and the plaintiff cross-appealed.

The defendant contends that the district court should have granted the defendant's motion for summary judgment on the issue of the plaintiff's status as a seaman rather than submitting that issue to the jury. In *Barrett v. Chevron, U.S.A. Inc.*, 781 F.2d 1067, 1073 (5th Cir.1986 en banc) we held that a worker qualifies for seaman status under the Jones Act if "the employee . . . [is] assigned permanently to a vessel or perform[s] a substantial part of his work on the vessel." We have stated "that the status determination . . . [is], like any other factual determination, generally to be entrusted to the jury:

> [The terms "seaman," "vessel," and "member of a crew"] have such a wide range of meaning under the Jones Act as interpreted in the courts, that, except in rare cases, only a jury or trier of facts can determine their application in the circumstances of a particular case. Even where the facts are largely undisputed, the question at issue is not solely a question of law when, because of conflicting inferences that may lead to different conclusions among reasonable men, a trial judge cannot state an unvarying rule of law that fits the facts.

Id. at 1072-1073 (citations omitted). "Our cases also make it clear . . . [however] that status may be determined by summary judgment in the appropriate situation. Thus . . . 'where the facts establish *beyond question as a matter of law* [the lack of seaman status] . . . a court . . . may, in the proper case, hold that there is no reasonable evidentiary basis to support a jury's finding that the injured person is a seaman . . . under the Jones Act.' " *Id.* at 1074 (emphasis in original) [citations omitted].

In *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir.1959) we held:

> [T]here is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

Id. at 779.

In adopting the second prong of this test, we rejected a stricter proposed test, one which would have limited seaman status to those persons on board a vessel who aid in navigation. *Id.* at 780. Thus, under the *Robison* test, the plaintiff qualifies for seaman status if he is permanently assigned to a vessel *or* performed a substantial part of his work on the vessel *and* the duties he performed contributed to the function of the vessel.

In this case the evidence established that the plaintiff performed a substantial part of his work, directing the sandblasting and painting of fixed platforms, from the GATES TIDE. Further, the GATES TIDE functioned as a paint boat. Consequently, the plaintiff's duties contributed to the function of the vessel. There was, therefore, sufficient evidence under the *Robison* test to support the jury's finding that the plaintiff had status as a seaman.

The defendant urges us to reject the *Robison* test and adopt the more stringent standard set forth by the Seventh Circuit in *Johnson v. John F. Beasley Construction Co.*,

742 F.2d 1054 (7th Cir.1984). In *Barrett v. Chevron, U.S.C., Inc.*, 781 F.2d 1067 (5th Cir.1986 en banc) we were offered a similar opportunity to reject the *Robison* test and adopt the *Johnson* test. Under the *Johnson* test, seaman status is conferred only on employees who "perform significant navigational functions or further the 'transportation function' of the vessel," and under this test it is evident that Wilander would not qualify.[1] *Barrett* at 1073. In declining to adopt this test we noted that "later Supreme Court cases require such a broad definition of 'aid to navigation' that the test proposed . . . is entirely inconsistent with them." *Id.* at 1073. Two justices of the Supreme Court recognize that a conflict exists between our test and that used in the Seventh Circuit. *See Lormand v. Aries Marine Corporation, et al.*, ___U.S.___, 108 S.Ct. 739, 98 L.Ed.2d 774 (1988) dissent by Justice White, denial of certiorari. The Supreme Court has not, however, held that our Circuit's test is incorrect and that of the Seventh Circuit correct. Absent such a holding by the Supreme

---

[1] We note in this connection plaintiff's sworn statement that he aided in the navigation of the vessel and on occasion actually steered or drove the vessel as well as assisted in mooring it. We do not find this statement relevant to whether the plaintiff's duties contributed to the function of the vessel. The plaintiff's duties were to supervise painting and sandblasting of off-shore platforms. The fact that he may, on occasion, have gratuitously assisted in navigation, steering or mooring the vessel does not make these activities a part of his duties. In determining a plaintiff's entitlement to seaman status we consider only those duties which his employer expected him to perform, not those that he chooses to perform for his own edification or amusement or out of the goodness of his heart.

Court, we must adhere to our en banc decision in *Barrett*, which reaffirmed the validity of the *Robison* test. Under that test there was sufficient evidence to support the jury's finding that the plaintiff had status as a seaman.

Finally, we turn to the plaintiff's contention that the jury finding that he was contributorily negligent is supported by insufficient evidence because "the only basis in the evidence for the jury's finding of fault on the part of . . . [the plaintiff] was the first statement of . . . the Indian crewmen who supposedly witnessed the accident." The plaintiff objected to the admission of this statement, apparently taken by the barge captain on his own initiative, on the ground that it was hearsay which fell within no exception to the hearsay rule. The court admitted the statement under Federal Rules of Evidence 803(6) and 803(24)."

These rules provide:

Rule 803. Hearsay Exceptions; Availability Of Declarant Immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) Records Of Regularly Conducted Activity.

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity, and if it was the regular practice of that business

activity to make the memorandum, report, record, or date compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method of circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

. . . .

(24) Other Exceptions.

A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

In order to be admissible under (6), the business records exception, the statement, must meet the following foundational elements:

(a) That the document have been made 'at or near' the time of the matters recorded therein; (b) that the document have been prepared by, or

> from information transmitted by a person 'with knowledge of the matters recorded'; (c) that the person or persons who prepared the document have been engaged in preparing it, in some undertaking, enterprise or business which can fairly be termed a 'regularly conducted business activity'; (d) that it have been the 'regular practice' of that business activity to make documents of that nature; and (e) that the documents have been retained and kept in the course of that or some other regularly conducted business activity.

White Industries v. Cessna Aircraft, 611 F.Supp. 1049 (D.C.Mo.1985).

In this case there was no showing that the document was kept in the course of some regularly conducted business activity or that it was the regular practice of the business to make such reports. The statement should not, therefore, have been admitted under subsection (6).

The "last-resort" subsection, number (24), permits the introduction of hearsay statements not admissible under any other if they are trustworthy and if the proponent of the statement informs the adverse party, in advance of trial, that he intends to use them. In this case, two factors made the statement untrustworthy. First, it appears that the statement was prepared in anticipation of litigation. Second, the witness later contradicted his statement. Further, the plaintiff was not given advance notice of the defendant's intent to use the statement. Neither, therefore, should the statement have been admitted under subsection (24).

Contrary to the plaintiff's assertion, however, there was other evidence to support the jury's finding that the

plaintiff was contributorily negligent. The difficulty is that the improperly admitted statement, allegedly made by the only witness to the accident, cannot have failed to have had a substantial impact on the jury. It is impossible to determine whether, absent that statement, the jury would have found the plaintiff contributorily negligent or to what extent. It is apparent that this issue, and the evidence pro and con upon it, is inextricably interwoven with the issue of primary negligence and with damages, so that if this is to be retried, so should they. We therefore AFFIRM the judgment insofar as it determines that Mr. Wilander was entitled to seaman status when injured, REVERSE as to its other determinations, and REMAND for further proceedings consistent herewith. It is so

ORDERED.

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER	:	CIVIL ACTION
	:	NO. 84-2014-LC
VS.	:	(Judge Veron)
McDERMOTT INTERNATIONAL, INC.	:	(Filed Aug 5, 1988)

RULING ON MOTION FOR JUDGMENT
ON FINDINGS OF THE JURY

By its motion of July 20, 1988, the defendant, McDermott International, Inc. sought, on the basis of the jury's March 10, 1988 answers to interrogatories, a ruling by the court that the plaintiff Jon C. Wilander's claim has no basis in American law, particularly the Jones Act, 46 U.S.C. §688. The motion was denied on the record and the court now assigns additional reasons.

BACKGROUND

The plaintiff was employed by defendant as a paint foreman in 1983 when he was injured on a fixed platform in the Persian Gulf off the coast of Dubai, allegedly by the negligence of defendant. In a bifurcated trial of the issue of Jones Act seaman's status, the jury returned a verdict in the form of answers to special interrogatories. It found:

(1) That plaintiff was either permanently assigned to, or performed a substantial amount of work aboard, the vessel GATES TIDE;

(2) That plaintiffs' performance of his duties contributed to the function of the GATES TIDE or to the accomplishment of its mission;

(3) That plaintiff was either permanently assigned to, or performed a substantial amount of work aboard, vessels belonging to the TIDEX fleet other than the GATES TIDE;

(4) That plaintiff's performance of his duties did not contribute to the function of the vessels in the TIDEX fleet or to the accomplishment of their mission;

(5) That plaintiff was either permanently assigned to, or performed a substantial amount of work aboard, the barge DB-9;

(6) That plaintiff's performance of his duties contributed to the function of the barge DB-9's regular operation or to the accomplishment of its mission; and

(7) That plaintiff was either permanently assigned to, or performed a substantial amount of work aboard, the fixed platform.

Special Interrogatories to the Jury, Record, document 90, March 10, 1988. The exact text of the interrogatories and their answers are attached as Appendix.

Trial testimony was to the effect that none of the vessels involved were American Flag vessels except the GATES TIDE which did not belong to defendant; that the GATES TIDE was a "paint boat" containing pumps and other equipment integrally used for sandblasting of fixed platforms which work plaintiff supervised; that the plaintiff was quartered aboard the DB-9; and that the DB-9 served as a sort of "mother ship" to the TIDEX fleet for the operations in question. Testimony was also to the effect that plaintiff's injury occurred on a small three-legged fixed platform while the sandblasting support

vessel then being used alongside the platform was the GATES TIDE.

ISSUES RAISED BY PRESENT MOTION

The defendant cites *Herb's Welding, Inc. v. Gray*, 470 U.S. 416 (1985) for the proposition that since the jury has found the plaintiff to have been assigned to a fixed platform, the plaintiff has no Jones Act or maritime negligence action against the defendant employer.

The defendant cites *Guidry v. South Louisiana Contractors, Inc.*, 614 F.2d 447 (5th Cir. 1980) for the proposition that if the plaintiff is a seaman as to the GATES TIDE by reason of that vessel serving as a base of painting operations, then he should be considered a "borrowed employee" of Tidex and any Jones Act claims would be against those vessels and their owners.

Finally, the defendant cites *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159 (5th Cir. 1987) for the proposition that since plaintiff was injured in a foreign place and was a seaman as to the DB-9, a foreign flag vessel, American law does not apply.

ANALYSIS AND CONCLUSIONS

The first argument of defendant relies on a mischaracterization of the jury verdict and on a *non sequitur*. On page two of its motion the defendant states that "the jury has decided [that plaintiff was] permanently assigned to a fixed platform." In fact, the seventh interrogatory was phrased in the disjunctive, so that the finding could equally be that the plaintiff "performed a

substantial amount of work" on a fixed platform. The latter alternative is better supported by the testimony. To the extent that the court may properly draw inferences from a jury verdict, the inference must be drawn which reasonably supports the verdict's validity. It does not follow from the jury's answer to interrogatory No. 7 that plaintiff could not also be a seaman. The rule of *Herb's Welding, Inc. v. Gray, supra*, is that an employee assigned to work on a fixed platform is not, for that reason alone, a seaman.

The defendant's second argument apparently holds that only an employer who is owner of the vessel as to which the employee is a seaman can have Jones Act liability. That is not the law. The Jones Act cause of action is for the employer's own negligence which causes injury to employees who are seamen. The injury need not occur aboard any vessel, but simply must occur while the employee is acting within the course and scope of his or her employment. *Braen v. Pfeifer Oil Transportation Co.*, 361 U.S. 129 (1959); *Guidry v. South Louisiana Contractors, Inc., supra*. Nor is it necessary that the vessel giving rise to seaman status belong to the employer. *Guidry*, 614 F.2d at 452. Moreover, even if a "borrowed employee" instruction had been requested and given, and plaintiff were found to be such as to Tidex, that does not preclude Jones Act liability of the payroll employer. *Id*.

Schexnider v. McDermott International, Inc., supra does not hold that American law cannot apply to a claim by an American who is a seaman as to an American-flag vessel but who is also "permanently assigned" to living quarters or who has "substantial" duties aboard a foreign-flag vessel. The Court does, however, have serious questions whether Jones Act seaman status is available to

an employee who is permanently assigned to or performs substantial work on *all* of (1) an American-flag vessel not owned by his employer, (2) a fleet of foreign-flag vessels not owned by his employer, (3) a foreign-flag vessel owned by his employer and (4) a foreign fixed platform.

The problem is twofold. One aspect goes to the choice-of-law factors of *Lauritzen v. Larsen*, 345 U.S. 571 (1953) and *Hellenic Lines, Ltd. v. Phoditis*, 398 U.S. 306 (1970), as glossed by *Schexnider v. McDermott International, Inc., supra*. Of particular significance in *Schexnider* was that the plaintiff there was allegedly injured aboard an Australian vessel, which was the only vessel connected with the case. *See, Schexnider*, 817 F.2d 1162. The court of appeals emphasized that "[t]he law of the flag is given *great* weight in determining the law to be applied in maritime cases." *Id.* (emphasis in original). In the present case the injury occurred on the foreign fixed platform, but there was sufficient evidence from which the jury could find that Mr. Wilander was acting in the service of the nearby American-flag GATES TIDE at the time.

The more troubling aspect of the problem is whether, given all of the jury's findings, the "substantial work" prong of the *Robison* test for seaman status could reasonably have been found satisfied as to the GATES TIDE. *See Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1073 (5th Cir. 1986); *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959).

In *Barrett* the Fifth Circuit reaffirmed the *Robison* two-prong test, that for Jones Act seaman status the plaintiff was (1) permanently assigned to, or performed a substantial portion of his work on the vessel, and (2) contributed

to the function of the vessel or to the accomplishment of its mission. *Barrett*, 781 F.2d at 1073. The jury interrogatories herein are phrased in these terms, and *Barrett* emphasized that "the status determination . . . is an inherently factual question." 781 F.2d at 1074.

Where as here, "the employee's regularly assigned duties require him to divide his time between vessel and land (or platform) his status as a crew member is determined 'in the context of his entire employment' with his current employer." *Barrett* at 1075; *quoting, Longmire v. Sea Drilling Corp.*, 610 F.2d 1342, 1347 (5th Cir. 1980). Without benefit of a transcript the court cannot asses the sufficiency of the evidence in this regard, and consequently cannot now second guess its contemporaneous decision to proceed to the Jones Act damages phase of the trial. Reasons given at the time were that the case is four years old, needing to be concluded, and that it was better to finish the case so that the entire case could be before the court of appeals. If the defendant's motion had been granted, the appeal would have gone up immediately and if the court of appeals reversed, a whole year could pass before retrial. Based on the teachings of the Fifth Circuit, it is this court's inclination to resolve doubt in favor of completeness of the record on appeal, and this policy weighed in favor of denying the motion.

The same policy prompted this court to favor the record with these additional reasons voicing its concerns over Jones Act status, since *Barrett* finds "twenty to thirty percent of [an employee's] work on vessels" insufficient for seaman status, 781 F.2d at 1076, but cites for such considerations the *Longmire* case, in which fifteen percent of time spent on vessels was found insufficient primarily

because of the incidental or make-work nature of the vessel chores involved, see 610 F2d at 1346-47. Where less than half of an employee's duties are performed on vessels or in furtherance of their mission, but such vessel tasks are *not* incidental or make-work, neither *Barrett* nor *Longmire* provide guidance other than the requirement of "substantiality." 781 F.2d at 1076. As stated above, the issue is one best suited to resolution by the court of appeals on a complete record. Accordingly, the defendant's motion has been DENIED.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 5th day of August, 1988.

/s/ Earl E. Veron
EARL E. VERON
UNITED STATES DISTRICT JUDGE

COPY SENT
DATE 8-5-88
BY ln
TO: Doyle/Woodley
Bercier/Jones/Bercier

APPENDIX

SPECIAL INTERROGATORIES TO THE JURY

PLEASE ANSWER THE FOLLOWING QUESTIONS. AS IS APPARENT FROM THE INSTRUCTIONS INCLUDED WITHIN THE INDIVIDUAL QUESTIONS, YOU *MUST* ANSWER THE QUESTIONS NUMBERED 1, 3, 5 and 7. YOU *MAY* FURTHER ANSWER QUESTIONS 2, 4 and 6 DEPENDING UPON YOUR RESPONSES TO QUESTIONS 1, 3 and 5.

1. Do you find from a preponderance of the evidence that Mr. Wilander was either permanently assigned

to, or performed a substantial amount of work aboard, the vessel, GATES TIDE?

Answer Yes or No Yes

2. If your answer to question number 1 is "No" please proceed to question number 3. If you answered "Yes" to question 1, please answer the following question: Do you find from a preponderance of the evidence that the duties which Mr. Wilander performed contributed to the function of the GATES TIDE's regular operation or to the accomplishment of its mission?

Answer Yes or No Yes

3. Do you find from a preponderance of the evidence that Mr. Wilander was either permanently assigned to, or performed a substantial amount of work aboard vessels belonging to the TIDEX fleet other than the GATES TIDE?

Answer Yes or No Yes

4. If your answer to question number 3 is "No" please proceed to question number 5. If you answered "Yes" to question number 3 please answer the following question: Do you find from a preponderance of the evidence that the duties which Mr. Wilander performed contributed to the function of the vessels in the TIDEX fleet or to the accomplishment of their mission?

Answer Yes or No No

5. Do you find from a preponderance of the evidence that Mr. Wilander was either permanently assigned to, or performed a substantial amount of work aboard, the barge DB-9?

Answer Yes or No Yes

6. If your answer to question number 5 is "No" please proceed to question number 7. If you answered "Yes" to question 5, please answer the following question: Do you find from a preponderance of the evidence

that the duties which Mr. Wilander performed contributed to the function of the barge DB-9's regular operation or to the accomplishment of its mission?

Answer Yes or No Yes

7. Do you find from a preponderance of the evidence that Mr. Wilander was either permanently assigned to, or performed a substantial amount of work aboard, the fixed platform?

Answer Yes or No Yes

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER	:	CIVIL ACTION
	:	NO. 84-2014-LC
VS.	:	(Judge Veron)
McDERMOTT INTERNATIONAL, INC.	:	(Filed Aug 31, 1988)

RULING ON DEFENDANT'S MOTION FOR
JUDGMENT NOTWITHSTANDING THE VERDICT

McDermott International, Inc., defendant in the captioned matter, has moved under Fed. R. Civ. Proc. 50(b) for judgment notwithstanding the verdict on the issues of Jones Act status, liability, and alternatively on the award of lost earnings on the grounds that the jury verdict, in these respects, is not supported by substantial evidence. The standard of *Boeing Company v. Shipman*, 411 F.2d 365 (5th Cir. 1969) applies to these issues. As for Jones Act negligence, the plaintiff seaman enjoys a featherweight burden of proof, see *Thornton v. Gulf Fleet Marine Corp., Inc.*, 752 F.2d 1074 (5th Cir. 1985).

In order to grant judgment n.o.v. the court must find that "the facts and inferences point so strongly and overwhelmingly in favor of a moving party that reasonable persons could not arrive at a contrary verdict." *Springborn v. American Commercial Barge Lines, Inc.*, 767 F.2d 89, 94 (5th Cir. 1985), *citing Boeing Co. v. Shipman, supra*. The guarantee of the seventh amendment requires that the court be cautious to validate the jury verdict "if at all possible." *Nichols Construction Corp. v. Cessna Aircraft Co.*,

808 F.2d 340, 346 n. 13 (5th Cir. 1985), *quoting, Gaspard v. Taylor Diving & Salvage Co., Inc.*, 649 F.2d 372 (5th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982).

Status and Choice of Law

The court has reviewed the transcripts in evidence and concludes that there is a sufficient basis for the jury to find that in the context of the entire term of his employment as a paint supervisor with McDermott International, Inc., Mr. Wilander was performing substantial work aboard the GATES TIDE and that his duties contributed to the mission of that vessel. In addition to the plaintiff being an American Citizen, the fact that the GATES TIDE is an American flag vessel indicates the choice of American law. *See, Schexnider v. McDermott International, Inc.*, 817 F.2d 1159, 1162 (5th Cir. 1987) (flag of vessel to be given great weight).

Negligence

Under the Jones Act, the jury need only have found that the slightest negligence of the defendant was causative of Mr. Wilander's injuries. *E.g., Spinks v. Chevron Oil Co.*, 507 F.2d 216, 233 (5th Cir. 1975). As there was more than a scintilla of evidence in plaintiff's favor on this issue, the verdict was properly within the jury's discretion.

Damages

This court may not infer by the mere fact of the verdict rendered that the jury failed to consider the

economic downturn of the oil industry. The evidence in the record presents a jury question which the jury has resolved. Although it has done so somewhat generously, this court cannot say that the conclusion reached was without a sufficient basis is evidence.

Conclusion

For the reasons stated above, the court determines that the defendant's Motion for Judgment Notwithstanding the verdict should be, and is hereby, DENIED.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 31st day of August, 1988.

/s/ Earl E. Veron
EARL E. VERON
UNITED STATES DISTRICT JUDGE

COPY SENT

DATE 8-31-88
BY ln
TO: Doyle/Woodley
Bercier, Jones, Bercier

NO. 89-1474

In the Supreme Court of the United States

OCTOBER TERM, 1989

McDERMOTT INTERNATIONAL, INC.
Petitioner,

versus

JON C. WILANDER
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI OF McDERMOTT INTERNATIONAL, INC.

J. B. JONES, JR.
JENNIFER JONES BERCIER
JONES, JONES & ALEXANDER
P. O. Drawer "M"
Cameron, LA 70631
Telephone: (318) 755-5714

Attorneys for Respondent,
Jon C. Wilander

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

QUESTION PRESENTED

Is this an appropriate case for reconsideration of this Court's two prior decisions declining to review the rule for determination of seaman's status set forth by the Fifth Circuit Court of Appeal in *Barrett v. Chevron, U. S. A., Inc.*, 781 F.2d 1067 (5th Cir. 1986)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

STATEMENT OF THE CASE

Because of petitioner's omission from the statement of the case of certain critical facts, it is necessary for respondent to supplement said facts in the following respects.

First of all, petitioner does not detail many of the connections between the parties in this case and the United States, which were relied upon by the courts below in holding that American law should provide the rule of decision herein. At the time seaman Wilander began his employment with petitioner McDermott International, Inc., that company was wholly owned by McDermott, Inc., an American corporation. On the date of the injury to Wilander, both companies maintained their principal places of business in New Orleans, Louisiana.

While working in the Persian Gulf, McDermott utilized the services of the Derrick Barge 9, a vessel which acted as a home base for Wilander and his crew. This vessel was owned by McDermott, Inc. (an American corporation) and built in the United States. Four other vessels were used in connection with the work supervised by the DB 9, one of which was the GATES TIDE. This was an American flag vessel which was chartered to McDermott International.

The GATES TIDE, to which Wilander was assigned, was out-fitted to serve as a "paint boat" for Wilander and his crew, and was essential to the performance of their duties. Wilander and his crew ate, slept and worked on this vessel, which housed all their equipment.

Wilander worked on ninety-day hitches, during which time he never came ashore. All of his work was per-

formed over the water, subject to the perils of the sea. As supervisor of the painting crew, Wilander conducted his supervision from the vessel, while his crew worked on the platforms. Large equipment, such as compressors, would stay aboard the vessel while the work was being performed.

Wilander and his crew sometimes assisted in the navigational functions of the vessel. Plaintiff's Exhibit 16[1] depicts Mr. Wilander actually piloting the JARAMAC 25, another boat utilized by McDermott in these operations in the Persian Gulf.

SUMMARY OF ARGUMENT

American law provides the applicable rule of decision in this case, involving an American citizen injured while serving as a member of the crew of an American flag vessel. *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953).

The test of seaman's status to be applied in this case is set forth in the decision of *Barrett v. Chevron U. S. A., Inc.*, 781 F.2d 1067 (5th Cir. 1986)

There exist no circumstances in this case which would justify the modification by this Court of the *Barrett* rule. *Lormand v. Aries Marine Corporation, et al*, 820 F.2d 1222 (5th Cir. 1987), cert. den. 484 U.S. 1031, 108 S.Ct. 739, 98 L.Ed.2d 774 (1988); *International Oilfield Divers, Inc., et al v. Lonnie Pickle, et al*, 791 F.2d 1237, 795 F.2d 1009 (5th Cir. 1986), cert. den. 479 U.S. 1059, 107 S.Ct. 939 (1987).

---

1. Attached hereto on Page A-1

ARGUMENT

McDermott International has characterized the issue presented for review by this Court as being two-fold, to-wit:

1) Which definition of seaman's status should be adopted by the Fifth Circuit Court of Appeal in reviewing this case, and

2) Did the Fifth Circuit err as a matter of law in applying American law in this case?

With regard to the second question, the brief of petitioner does not allege, as required by Rule 17, that the decision as to choice of law made by the Fifth Circuit and the district court in this case is in conflict with that of any other circuit, or is so far departed from the accepted course of judicial proceedings, as to justify the exercise of this Court's supervisory powers. In fact, the facts of this case presented a much more significant connection with the United States than alleged by McDermott International. The reason McDermott International failed in their quest to prevent the application of American law to this case is the fact that they were never able to demonstrate that any other country had a more substantial interest in the application of its own law than did the United States. This is the analysis required by such cases as *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953), *Hellenic Lines v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970) and *Phillips v. Amoco Trinidad Oil Co.*, 632 F.2d 82 (9th Cir. 1980). The nationality of the injured worker "has always been viewed as a relevant and important consideration in determining the appropriate law to apply," (Phillips, supra, at p. 89), and even if no other factors show

ing a substantial interest were present, the mere fact that Wilander was found to be a seaman as to an American flag vessel would support the application of American law. *Lauritzen*, supra, 345 U.S. at 585; 73 S.Ct. at 929.

McDermott Intenational has argued on five separate occasions that Wilander did not meet the test of seaman's status set forth by the Fifth Circuit Court of Appeal in *Barrett v. Chevron U. S. A., Inc.*, 781 F.2d 1067 (5th Cir. 1986) - before the jury, before the trial judge (by motion for summary judgment, motion to strike Jones Act claim and motion for judgment on findings of the jury), and before the Fifth Circuit itself. In the Fifth Circuit, McDermott even had the good fortune of having two members of the panel who had been among the dissenters in *Barrett*. Having failed in this mission every time, McDermott now argues that the incorrect test was applied, and the Seventh Circuit rule of *Johnson v. John F. Beasley Construction Company*, 742 F.2d 1054 (7th Cir. 1984) should be applied to this case.

McDermott's claim of the "current tension in the Fifth Circuit" with regard to the standard to be used in determining status is misplaced. The rule of *Pizzitola v. Electro-Coal Transfer*, 812 F.2d 977 (5th Cir. 1987), cert. den. 484 U.S. 1059, 108 S.Ct. 1013, 98 L.Ed.2d 978 (1988), excluding those workers covered by the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 USC 901, et sub from Jones Act coverage applies *only* when the "employee is engaged in an occupation expressly enumerated in the Act." *Leonard v. Dixie Well Service & Supply, Inc.*, 828 F.2d 291, 296 (5th Cir. 1987); *Thibodeaux v. Torch, Inc.*,858 F.2d 1048 (5th Cir. 1988). McDermott cites no authority for the proposition that *Barrett* does not remain the Fifth Circuit rule, and the opinion of the Fifth Circuit in the instant case reiterates the continuing viability of *Barrett*.

Therefore, it is clear that the Fifth Circuit has applied the same test for determination of seaman's status since the decision of *Offshore Company v. Robinson*, 266 F.2d 769 (5th Cir. 1959), to-wit:

> There is an evidentiary basis for a Jones Act cae to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

This evidentiary basis was present in this case.

As pointed out by McDermott, this court has declined to address the question of whether the *Barrett/Robison* rule should be modified, in *Lormand v. Aries Marine Corporation, et al*, 820 F.2d 1222 (5th Cir. 1987), cert. den. 484 U.S. 1031, 108 S.Ct. 739, 98 L.Ed.2d 774 (1988) and *International Oilfield Divers, Inc., et al v. Lonnie Pickle, et al*, 791 F.2d 1237, 795 F.2d 1009 (5th Cir. 1986), cert. den. 479 U.S. 1059, 107 S.Ct. 939 (1987). There are certainly no circumstances which would justify the granting of a writ of certiorari present in this case which were absent in those cases.

In fact, this is a particularly inappropriate case for resolution of any possible conflict between the circuits regarding the test for seaman's status, since:

1) There is an evidentiary basis in this case for a finding that Wilander satisfied *both* the *Barrett/Robinson* test *and* the *Johnson* test. (See Exhibit 16, attached.)

2) There is no conflict presented between the application of either the LHCA or the Outer Continental Shelf Lands Act (OCSLA), 43 USC 1331, et sub and the Jones Act, since neither the LHWCA nor the OCSLA has any application to this case.

3) As an American seaman working for from home in a strange land, spending *all* of his working hours facing the perils of the sea, Wilander is in dire need of the "special solicitude" to be accorded seaman by the courts of admiralty. *Moragne v. States Marine Lines*, 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970).

CONCLUSION

This man was injured on July 4, 1983. His case is currently set to be retired in the United States District Court on May 29, 1990. (A new trial was ordered by the Fifth Circuit, although not requested by Wilander, due to an error of the lower court in the admission of certain evidence favorable to McDermott.) The Jones Act is to be liberally construed so as to achieve maximum coverage. *In Re Industrial Transporation Corp.*, 344 F.Supp. 1311, 1317 (E.D.N.Y. 1972), and cases cited therein. We would strongly urge this Honorable Court to deny the application for writ of certiorari made by McDermott International in this case, so that this seaman may, finally, be granted the relief

to which he is entitled.

Respectfully submitted,

J. B. JONES, JR.
JENNIFER JONES BERCIER
JONES, JONES & ALEXANDER
P. O. DRAWER "M"
Cameron, LA 70631
Telephone: (318) 775-5714

Attorneys for Respondent,
Jon C. Wilander

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari of McDermott International, Inc. has this day been served upon counsel of record by placing same in the United States mail, postage prepaid and properly addressed as follows:

Mr. James B. Doyle
Voorhies & Labbe
P. O. Box 3527
Lafayette, LA 70502

Cameron, Louisiana; May _____, 1990.

No. 89-1474

In The

Supreme Court of the United States

October Term, 1990

McDERMOTT INTERNATIONAL, INC.,

Petitioner,

vs.

JON C. WILANDER,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

JOINT APPENDIX

JAMES B. DOYLE
VOORHIES & LABBE'
P. O. Box 3527
Lafayette, LA 70502
Telephone: (318) 232-9700
Counsel for Petitioner

J. B. JONES, Jr.
JONES, JONES & ALEXANDER
P. O. Drawer M
Cameron, LA 70631
Telephone: (318) 775-5714
Counsel for Respondent

Petition For Certiorari Docketed March 20, 1990
Certiorari Granted June 18, 1990

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER CIVIL ACTION NO. CV84-2014

VERSUS

McDERMOTT INTERNATIONAL, INC.

DATE	NR.	PROCEEDINGS
08-02-84	1	Complaint
09-20-84	4	Answer (D) to Complaint
03-07-88	78	MINUTES – T w/jury (1st Day): Conference held in chambers; ct. rules seaman status will be tried to jury first and then liability and damages will be tried to same jury; Mrs. Bercier objects to bifurcation of seaman status from liability portion of trial; the ct.'s reasons for ruling are dictated.
03-08-88	79	MINUTES – T w/jury (2nd Day): Conf. held in chambers; an Offer of Proof is made by Mr. Jones by reading lines 20-25, page 20 and the first line on page 21 of Mr. Wilander's deposition. The ct. rules it is not relevant to subject matter being asked; ct. questions a spectator in audience and determines she came w/juror #50 and ct. cautioned spectator not to talk to Mrs. Thibodeaux about the case; Mr. Doyle orally moves that the affidavit attached to the motion for summary judgment filed in 1986 be stricken and the motion for SJ granted, and suit be dismissed and the P taxed for costs of

defense; ct. rules Mr. Wilander admitted his testimony was not from personal knowledge; that he cannot remember; motion is denied; oral motion by Mr. Doyle to strike the entire testimony of Mr. Wilander on direct examination and instruct jury to disregard it is taken up; ct. agrees w/Mr. Doyle, it is not a credibility question; Mr. Wilander testified on matters that were not from his personal knowledge; the motion to strike is denied; oral motion by Mr. Doyle for a limited instruction to jury is denied; ct. may modify its standard charge and both sides are instructed to submit proposed charges; stipulated that McDermott International[1] is a corporation originating under laws of New Jersey and its principal place of business is in New Orleans, LA, 1010 Common St.

03-09-88 80 MINUTES – T w/jury (3rd Day): Stipulation is entered by and between counsel, where the vessel Gates Tide was under contract to McDermott at the time of the accident.

03-10-88 81 MINUTES – T w/jury (4th Day): Objections to ct.'s charge are noted on record; jury found the P to be a seaman; T as to liability and damages continued to 4-25-88 at 9:00 AM before same jury.

03-10-88 93 MINUTES – T w/jury (4th Day): Minutes of ct. are amended to include the following: Oral motion by Mr. Jones to reopen the evidence for

[1] This is a misprint; this should have been "McDermott, Inc.," see 03-17-88 entry.

the purpose of making an offer of proof is granted and P's tax returns for years 1982 and 1983 are received as P's Offer of Proof #1; at close of all evidence, Mr. Jones moves for directed verdict on all issues and motion is denied; at close of all evidence Mr. Doyle moves for a directed verdict and argues the jurisdiction in question, the motion is overruled; Mr. Doyle moves for a directed verdict on all issues and the motion is denied.

03-17-88 94 MINUTES-SC: By agreement of counsel, stipulation entered into 3-8-88 should show that McDermott is a Delaware Corp. w/principal place of business in New Orleans, LA; at the suggestion of the ct., a settlement conf. is held w/EFH, JR on damages.

07-26-88 118 MINUTES – T w/jury (5th Day): Mr. Doyle objects to introduction of depo of James Boudreaux and ct. rules it is admissible only insofar as his knowledge of activities of company he works for. The excluded portions of Boudreaux depo are made P's Offer of Proof #2; report by Allen G. Simmons is made P's Offer of Proof #3.

07-27-88 119 MINUTES – T w/jury (6th Day): Counsel for P objects to testimony of Kenneth J. Boudreaux, Economist, on grounds opinion report was given to P's counsel the day before trial which is not in compliance w/ct's standing order governing PT procedure. Arguments are heard – the objection is maintained; at close of P's case in chief, the defense moves for directed verdict; the motion is denied,

		reserving deft's right to file a motion for judgment nov; report of Kenneth J. Boudreaux is made deft's Offer of Proof #1; at conclusion of trial, ct. grants permission to counsel to substitute small photos for all large photos and charts rec'd in evidence.
07-28-88	120	MINUTES – T w/jury (7th Day): Counsel for P objects to statement of Chandresekharan on the grounds of hearsay and failure to furnish; objections overruled and statement is allowed to come in; report of Dr. Reid Fontenot, Economist, is made Deft's Proffer #2; Ms. Bercier moves for directed verdict on issue of liability; motion denied, Counsel for P states on the record P has abandoned his claim for unseaworthiness.
07-29-88	121	MINUTES – T w/jury (8th Day): P's objections to ct. charge are noted and denied; Deft's objections to ct. charge are noted and denied; verdict rendered – verdict form attached.
07-29-88	122	SPECIAL Interrogs to Jury
08-01-88	129	JUDGMENT – in favor of P and ag/D in amount of $337,500.00 together w/legal interest from date of judgment demand until paid.
08-11-88	131-134	MOTION (McDermott International, Inc.) for Judgment NOV or New Trial Pursuant to Rule 59 FRCP – noticed 08-22-88 for hearing before JTT, JR w/out oral argument.
08-24-88	135	MEMORANDUM in Opposition to Motion for Judgment NOV or Alternatively for New Trial.

08-31-88	136	RULING on D's Motion for Judgment Notwithstanding Verdict – ct. determines that D's Motion for Judgment NOV is DENIED.
08-31-88	137	MOTION (McDermott) for Leave to Suppl. Motion for Judgment NOV or New Trial, no proposed included and not ref to EEV due to #136.
09-09-88	138	NOTICE OF APPEAL (D) to the 5th Cir. Ct. of Appeals from the judgment signed on 08/01/88 and from the ruling on motion for judgment nov dated 08/31/88; APPEAL FEE PAID; NOE 09/12/88 to Ct. of Ap.; Doyle/Woodley w/trans. order; Bercier; Judge Veron; Benoit; Williams.
09-13-88	139	NOTICE OF CROSS APPEAL (P) to the 5th Cir. Ct. of Appeals from the judgment filed on 08/01/88 and entered on 08/02/88; APPEAL FEE PAID; NOE 9/14/88 to Ct. of Ap.; Jones/Bercier/Bercier w/trans. order; Doyle/Woodley; EEV; Benoit; Williams.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER, Plaintiff	:	CIVIL ACTION NO. ___
VS.	:	
MCDERMOTT INTERNATIONAL, INC., Defendant	:	FILED AUG 02 1984
	:	CV 84-2014

COMPLAINT

The complaint of JON C. WILANDER, a resident of the full age majority of the State of Louisiana, with respect represents:

I.

Made defendants therein are MCDERMOTT INTERNATIONAL, INC., a Delaware Corporation, which should be served in the matter and form provided by law through its Registered Agent for service of process:

C T Corporation System
1300 Hibernia Building
New Orleans, Louisiana 70112

II.

This cause of action arises under 46 U.S.C. § 688 (the Jones Act) and the general maritime law.

III.

At all times pertinent herein, plaintiff Jon C. Wilander was a seaman employed by McDermott International, Inc., and the member of the crew of a vessel owned and operated by McDermott International, Inc. in the Persian Gulf.

IV.

On or about July 4, 1983 while working on a barge owned by McDermott International, Inc. in the Persian Gulf, plaintiff was involved in a terrible explosion, which sent fragments of metal pipe into his skull. The explosion was caused solely by the negligence and fault of McDermott International, Inc., its agent, servants and employees, and the unseaworthiness of McDermott's vessel. As a result, plaintiff sustained painful and permanent disabling injuries, as well as loss of wages.

V.

Plaintiff itemizes his damages as follows:

1.	Loss of wages – past, present & future	$2,000,000.00
2.	Pain and suffering – permanent disability	2,000,000.00
3.	Medical expenses – past, present & future	200,000.00

VI.

The fault of defendant was gross, capricious, arbitrary and such a wanton and reckless nature to constitute

punitive damages under the laws of the State of Louisiana and therefore, plaintiff is entitled to punitive damages in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

VII.

Plaintiff prays for a trial by jury herein.

WHEREFORE, premises considered, petitioner prays:

1. That the defendant, McDermott International, Inc., be duly cited and served with a copy of this petition in the order to answer the same in the manner and form provided by law.

2. That after due proceedings had there be judgment herein in favor of plaintiff, Jon C. Wilander, and against the defendant, McDermott International, Inc., in the full and just sum of NINE MILLION TWO HUNDRED THOUSAND ($9,200,000.00) DOLLARS, together with legal interest thereon from and after date of accident, July 4, 1983 until paid, and for all costs of these proceedings.

3. For a trial by civil jury.

4. For all orders and decrees necessary in the premises and for full, general and equitable relief.

By his attorneys,

JONES, JONES & ALEXANDER

/s/ Michael H. Bercier
MICHAEL H. BERCIER
POST OFFICE DRAWER M
CAMERON, LOUISIANA
70631
Telephone: 318/775-5714

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

[Title Omitted In Printing]

ANSWER

NOW INTO COURT through undersigned counsel, comes MCDERMOTT INTERNATIONAL, INC., sought to be made a defendant herein, and for answer to plaintiff's complaint, denies each and every allegation contained therein that is not hereinafter specifically admitted.

FIRST DEFENSE

That the complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

That plaintiff's claim is barred by prescription and laches.

THIRD DEFENSE

Answering categorically the allegations of the complaint, defendant avers:

1.

The allegations of Paragraph I of the complaint are admitted.

2.

That the allegations of Paragraph II of the complaint require no answer inasmuch as they set out a conclusion of law; however, if answer is required then defendant denies same for lack of sufficient information on which to justify a belief.

3.

That defendant admits that plaintiff was employed by it; the remaining allegations of Paragraph III are denied.

4.

That the allegations of Paragraph IV of the complaint are denied.

5.

That the allegations of Paragraph V of the complaint are denied.

6.

That the allegations of Paragraph VI of the complaint are denied.

7.

That the allegations of Paragraph VII of the complaint require no answer.

FOURTH DEFENSE

That any injuries sustained by the plaintiff resulted from his own negligence and want of care, in tampering with or striking, or standing near to a co-worker who was tampering with, or striking, a leaking stud bolt in a flange of the piping system when he knew that at the time it was being hydrostatically tested at high pressure.

FIFTH DEFENSE

That any damages which complainant might be entitled to recover in the premises should be wholly or in part mitigated by reason of his contributory negligence, which proximately caused or contributed to his provable injuries, if any.

SIXTH DEFENSE

That by striking or tampering with a leaking bolt of the piping system while it was under high pressure, plaintiff assumed the risk of injury.

WHEREFORE, premises considered, defendant prays that this answer be deemed sufficient and that after due proceedings had, that there be judgment herein, in favor of defendant, MCDERMOTT INTERNATIONAL, INC., and against plaintiff, JON C. WILANDER, dismissing the

demands of plaintiff with prejudice and at plaintiff's costs.

BY ITS ATTORNEYS:
WOODLEY, BARNETT,
COX, WILLIAMS,
FENET & PALMER

EDMUND E. WOODLEY
P.O. Drawer EE
Lake Charles, LA 70602
(318) 433-6328

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER,	:	
VS.	:	CIVIL ACTION
MCDERMOTT,	:	NO. 84-2014
	:	FILED
	:	FEB 11 1987

REPORT AND RECOMMENDATION OF MAGISTRATE

Procedural Background

On August 2, 1984, plaintiff filed a complaint against his employer based upon the Jones Act, 46 U.S.C. Section 688, *et seq*. Plaintiff seeks $9,200,000 in damages, $5,000,000 of which are punitive damages, for injuries sustained in an explosion on July 4, 1983. Defendant's answer was filed on September 20, 1984.

By joint motions the case was continued first on April 19, 1985 and, once again, on January 27, 1986. On June 18, 1986 defendant filed a motion for summary judgment which is presently before the court.

Analysis of Law and Fact

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law." Rule 56(c), Fed.R.Civ.P. The party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact by the record properly before the court, and material submitted on behalf of the opposing party is on the whole indulgently regarded. *See generally, Bishop v. Wood*, 426 U.S. 341 (1976) (for purposes of the motion, non-movant's version of the facts must be accepted and all disputed matters must be resolved in his favor); *U.S. v. Diebold*, 369 U.S. 654 (1962) (on summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion.); *Bell v. Cameron Meadows Land Company*, 669 F.2d 1278 (9th Cir. 1982) (a motion for summary judgment places an affirmative burden on the moving party to demonstrate the absence of genuine issues of material facts and to show that he is entitled to judgment as a matter of law).

Defendant's motion for summary judgment presents two issues, specifically, whether plaintiff was a "seaman" for purposes of the Jones Act and whether punitive damages may be recovered in an action under the Jones Act.

In 1959, the Fifth Circuit enunciated the test for determining seaman status as that term is used in the Jones Act. *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959). After a review of Supreme Court and other federal court jurisprudence which proceeded it, the *Robison* Court concluded:

> "There is an evidentiary basis for a Jones Act case to go to the jury:
>
> (1) If there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and
>
> (2) If the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during movement or during anchorage for its future trips."

Id. at 779; *accord, Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1074 (5th Cir. 1986).

Rather than providing a "self-executing formula", the *Robison* holding provides an "analytical starting point". *Brown v. I.T.T. Raynier, Inc.*, 479 F.2d 234 (5th Cir. 1974). Indeed, the *Robison* Court made clear that the status determination was generally to be entrusted to the jury:

> "[The terms 'seaman', 'vessel', and 'member of a crew'] have such a wide range of meaning under the Jones Act as interpreted in the courts, that, except in rare cases, only a jury or trier of facts can determine their application in the circumstances of a particular case. Even where the facts are largely undisputed, the question at issue is not solely a question of law when because of conflicting inferences that may lead to different conclusions among reasonable men, a trial judge cannot state an unveering rule of law that fits the facts."

Robison, 266 F.2d at 779-80 [footnotes omitted]; *Barrett*, 781 F.2d at 1073, 1074.

In support of the motion for summary judgment, defendant refers to a portion of plaintiff's testimony taken at a deposition, wherein plaintiff indicated that the

majority of the work he performed was a fixed platform. In an affidavit attached to a memorandum in opposition to the motion for summary judgment, plaintiff attests that what he meant by this statement was that the platform was the structure sandblasted and painted, but that the work was carried out from the vessel.

In further support of the motion for summary judgment, defendant submitted the sworn affidavit of Daniel P. Ledet, the Group Personnel Director for the Middle East Area of McDermott International, Inc., who states that plaintiff's only connection to any vessel was as a passenger to the jobsite or using the vessel as a work platform. Mr. Ledet further stated that the majority of plaintiff's work while employed with defendant was on a fixed platform. Plaintiff swears, in an affidavit, that he spent at least 70% of his time working aboard a vessel during his years of employment with the defendant.

For purposes of the summary judgment motion, plaintiff's version of the facts must be accepted, and all disputed matters must be resolved in his favor. *See, Bishop v. Wood, supra*. Consequently, there is a genuine issue of material fact, specifically, the nature and extent of plaintiff's work in relation to a vessel while employed with defendant. Accordingly, defendant's motion for summary judgment, as to the "seaman issue", should not be granted since this is clearly not a case "where the facts establish beyond question as a matter of law the lack of seaman status." *Barrett*, 781 F.2d at 1074.

The final issue raised in the motion for summary judgment is whether punitive damages may be awarded

under the Jones Act. Defendant argues that punitive damages are not available under the Jones Act and cites in support of his position *Kopczynski v. The Jacqueline*, 742 F.2d 555 (9th Cir. 1984). In *Kopczynski*, the Ninth Circuit held that punitive damages are not available under the Jones Act because recovery under the Act is expressly limited to pecuniary losses. *Id.* at 560-561, citing, *Nygaard v. Peter Pan Seafoods, Inc.*, 701 F.2d 77, 80 (9th Cir. 1983). The Ninth Circuit also discussed how the Jones Act incorporates by reference the standards of the FELA under which only compensatory damages are available. *Kopczynski*, 742 F.2d at 560.

The Fifth Circuit has never addressed the specific issue of whether punitive damages may be awarded under the Jones Act. The Fifth Circuit has held, however, that Jones Act survivors are limited to pecuniary losses. *Ivy v. Security Barge Lines, Inc.*, 606 F.2d 524, 526-29 (5th Cir. 1979) (*en banc*), *cert. denied*, 446 U.S. 956 (1980). In dicta, the Fifth Circuit has stated, "Doubt exists as to recovery [of punitive damages under the Jones Acts] because of this court's previous holding that Congress intended only pecuniary losses to be recoverable under the Act." *Complaint of Merry Shipping*, 650 F.2d 622, 626 (5th Cir. 1981), citing, *Ivy v. Security Barge Lines, Inc., supra*. The Fifth Circuit in *Merry Shipping* also drew an analogy to the FELA and indicated that at least one circuit had squarely held that punitive damages may not be recovered under the FELA. *Merry Shipping*, 650 F.2d at 626 citing, *Kozar v. Chesapeake and Ohio Railroad*, 449 F.2d 1238 (6th Cir. 1971); *see also, Shaw v. Garrison*, 545 F.2d 980, 986 (5th Cir. 1977) (Dicta).

Although this court is not bound by dicta, the reasoning employed in *Merry Shipping*, as well as by the Ninth Circuit in *Kopczynski* is persuasive. Accordingly, summary judgment in favor of defendant should be entered to the effect that punitive damages may not be recovered under the Jones Act.

Under the provisions of 28 U.S.C. Section 636(b)(1)(C), failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of service can result in the waiver of a de novo district court review.

THUS DONE AND SIGNED, in Chambers, at Lake Charles, Louisiana, on this 11 day of February, 1987.

/s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES
MAGISTRATE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER	:	CIVIL ACTION
VS.	:	NO. 84-2014-LC (Judge Veron)
MCDERMOTT INTERNATIONAL, INC.	:	
	:	FILED MAR 03 1988
	:	

RULING ON MOTION TO DISMISS
AND MOTION TO STRIKE

This matter comes before the court upon motion of defendant McDermott International, Inc. to dismiss for failure to state a claim upon which relief can be granted, and motion to strike plaintiff's Jones Act claim.

This court previously denied a motion for summary judgment on the issue of whether the plaintiff possessed seaman status under the Jones Act. The court reasoned that an issue of fact existed as to whether the plaintiff was or was not assigned to the American vessel GATES TIDE.

The motion presently before the court, involves in this court's opinion, issues which again hinge on a single question of fact; i.e., what connection, if any, existed between the plaintiff and the lone American vessel GATES TIDE. Just as the defendant is not entitled to have such a question of fact resolved on summary judgment, neither is he entitled to have the question resolved by way of a Rule 12 motion.

The Rule 12 motion to dismiss is viewed with disfavor and should rarely be granted. *Kaiser Aluminum, et al*

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER	:	
VS.	:	CIVIL ACTION NO. 84-2014-LC
McDERMOTT INTERNATIONAL, INC.	:	Filed AUG 01 1988

JUDGMENT

This case came for trial by jury on July 26, 27, 28, and 29, 1988. Based on the jury's answers to the interrogatories, a copy of which is attached;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiff JON C. WILANDER and against the defendant McDERMOTT INTERNATIONAL, INC., in the amount of THREE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($337,500.00), together with legal interest from date of judgment demand until paid.

SIGNED in Chambers at Lake Charles, Louisiana, this 1st day of August, 1988.

/s/ Earl E. Veron
EARL E. VERON
UNITED STATES DISTRICT JUDGE

Judgment Entered 8-2-88

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

Filed JUL 29 1988

CIVIL ACTION NO. 84-2014

SPECIAI INTERROGATORIES TO THE JURY

1. Do you find from a preponderance of the evidence that McDermott International was negligent in the manner claimed by Jon C. Wilander and that such negligence was a legal cause of damage to Mr. Wilander under the standards given to you in regard to the Jones Act claim?

   Answer Yes or No Yes

2. If you answered "Yes" to Question One, do you find from a preponderance of the evidence that Jon C. Wilander was himself negligent in the manner claimed by McDermott International and that such negligence was a legal cause of his own damages under the standards given to you in regard to the Jones Act claim?

   Answer Yes or No Yes

3. If you answered "Yes" to Questions One and/or Two, what proportion or percentage of Mr. Wilander's damages do you find from a preponderance of the evidence to have been legally caused by the fault of the respective parties?

   Answer in Terms of Percentages:

   McDermott International 75%

   Jon C. Wilander 25%

   (Note: The total of the percentages given in your answer should equal 100%)

4. What is the total amount of damages, if any, that you find Jon C. Wilander suffered as a result of the accident and injuries?

a)	Loss of Past Earnings	$300,000.00
b)	Loss of Future Earnings	$100,000.00
c)	Amount of General Damages	$ 50,000.00

SIGNED at Lake Charles, Louisiana, this 29 day of July, 1988.

/s/ Glenda Stewart
FOREPERSON

IN THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

[Title Omitted In Printing]

Filed SEP 9 1988

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that McDermott International, Inc., defendant in the above captioned matter, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment of the District Court signed August 1, 1988, and the Ruling on Motion for Judgment N.O.V. dated August 31, 1988.

Respectfully submitted,

WOODLEY, WILLIAMS, FENET,
PALMER, DOYLE & NORMAN

/s/ James B. Doyle
JAMES B. DOYLE – 1137
EDMUND E. WOODLEY – 4495
500 Kirby Street
P.O. Drawer EE
Lake Charles, LA 70602
(318) 433-6328

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION
[Title Omitted In Printing]
Filed SEP 13 1988

NOTICE OF CROSS APPEAL

NOTICE IS HEREBY GIVEN that plaintiff, JON C. WILANDER, hereby cross appeals to the United States Court of Appeals for the Fifth Circuit from that portion of the judgment of the District Court entered herein on August 1, 1988 as follows:

(1) The finding of the jury which assessed 25 percent contributory fault to Jon C. Wilander; and

(2) The amount of damages, which is inadequate and should be raised.

Respectfully submitted,

JONES, JONES & ALEXANDER

/s/ J. B. Jones, Jr.
J. B. JONES, JR. (6071)
POST OFFICE DRAWER M
CAMERON, LA 70631
Telephone: 318/775-5714

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JON C. WILANDER VERSUS McDERMOTT INTERNATIONAL, INC.	:	CIVIL ACTION NUMBER 84-2014-LC
	:	JUDGE HUNTER
	:	Filed MAY 30 1990

ORDER

The Court this day takes notice of the following:

An application for writ of certiorari is now pending before the U.S. Supreme Court;

The matters in contest in the application for writ of certiorari, if decided favorably to defendant, would be dispositive of this pending case;

Counsel for defendant has previously moved for a stay of this trial, pending action by the U.S. Supreme Court on the application and said motion for stay having been opposed by plaintiff was denied;

Now counsel for plaintiff presents to the court that the ends of judicial efficiency are best served by the court reconsidering said motion and granting the stay;

Counsel for defendant joins counsel for plaintiff in this representation, moves for imposition of a stay as previously prayed for; moves the jury empaneled to try the case be dismissed; and the matter be passed without

date pending further order of the court, and in all said motions counsel for plaintiff concurs;

THEREFORE

IT IS ORDERED that the jury empaneled to try this cause be dismissed from its service at defendant's cost; that the stay of proceedings previously sought by defendant be granted; and, that this matter be passed without date, subject to the further order of the court.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this 30th day of May, 1990.

/s/ Edwin F. Hunter
EDWIN F. HUNTER, JR.
UNITED STATES DISTRICT JUDGE
SENIOR JUDGE

PRESCRIBED BY THE COMMISSIONERS OF CUSTOMS & EXCISE

WITH THE CONSENT OF THE MINISTER OF TRANSPORT

CERTIFICATE OF BRITISH REGISTRY

PARTICULARS OF SHIP

Official Number	Name of Ship	No., Year and Port of Registry	No., Year and Port of previous Registry (if any)
356668.	FORCE TIDE.	No 22 of 1974 George Town Cayman Islands.	1970. Panama C.A.

Whether British or Foreign Built	Whether a Sailing, Steam or Motor Ship; if Steam or Motor, how propelled	Where Built	When Built	Name and Address of Builders
FOREIGN	Motorship.	NEW-ORLEANS, LA; U.S.A.	JULY 1970.	AMERICAN MARINE CORPORATION; NEW-ORLEANS, LA; U.S.A.

		FEET	TENTHS
Number of Decks	One.		
Number of Masts	Two.		
Rigged			
Stem	Curved.		
Stern	Square.		
Build			
Framework and description of vessel			
Number of Bulkheads			
Length from fore-part of stem, to the aft side of the head of the stern post		161.	05
Main breadth to outside of plating		36.	01
Depth in hold from tonnage deck to ceiling amidships		15	08.
Depth in hold from upper deck to ceiling amidships, in the case of three decks and upwards			
Depth from top of deck at side amidships to bottom of keel			
Round of beam			
Length of engine-room (if any)			

PARTICULARS OF PROPELLING ENGINES, &c. (IF ANY), as supplied by Builders, Owners, or Engine Makers.

No. of sets of Engines	Description of Engine	Whether British or foreign made	When made	Name and Address of Makers	Reciprocating Engines: No. and Diameter of cylinders in each set	Reciprocating Engines: Length of Stroke	Rotary Engines: No. of Cylinders in each set	N.H.P. B.H.P. I.H.P. Estimated Speed of Ship
		Engines	Engines	Engines				4300.
No. of Shafts	Particulars of Boilers							
	Description	Boilers	Boilers	Boilers				
	Number							
	Loaded pressure							

PARTICULARS OF TONNAGE.

Gross Tonnage	No. of Tons	Deductions Allowed	No. of Tons
Under Tonnage Deck	411.92.	On account of space required for propelling power	
Space or spaces between decks		Under Sec. 79 of the Merchant Shipping Act, 1894, on account of spaces provided by way of crew accommodation, as follows:—	
Turret or Trunk			
Forecastle			
Bridge Space			
Poop	25.99.		
Break			
Side Houses			
Deck Houses			
Chart House		(Number of Seamen or Apprentices for whom accommodation is certified .....)	
Spaces for Machinery and Light and Air, under Sec. 78 (2) of the Merchant Shipping Act, 1894		Other deductions under Sec. 79 of the Merchant Shipping Act, 1894, and Sec. 54 of the Merchant Shipping Act, 1906, as follows:—	
Excess of hatchways			
	Cubic Metres	TOTAL	
Gross Tonnage	437.91.		
Deductions, as per Contra			
Register Tonnage	297.		

NOTE 1.—The tonnage of the engine-room spaces below the upper deck is.....tons, and the tonnage of the total spaces framed in above the upper deck for propelling machinery and for light and air is.....tons.

NOTE 2.—The undermentioned spaces above the upper deck are not included in the cubical contents forming the ship's register tonnage.

.....

.....

.....

NOTE 3.—The location and tonnage of the boatswains store rooms are as follows :—.....

.....

.....

.....

I, the undersigned, Registrar of British Ships at the Port of George Town, Cayman Islands, hereby certify that the Ship, the Description of which is prefixed to this my Certificate, has been duly surveyed, and that the above Description is in accordance with the Register Book; that.....

whose Certificate of Competency or Service is No..... is the Master of the said Ship; and that the Name....., Residence and Description of the Owner....., and Number of Sixty-fourth Shares held by....., are as follows:—

Name, Residence, and Occupation of the Owner.	Number of Sixty-fourth Shares.
TIDEWATER CAYMAN INC having its principal place of business at George Town Cayman Islands	64 Shares.

Dated at George Town, Cayman Islands the 18th day of June One thousand nine hundred & seventy four.

.....Registrar of British Ships.

NOTICE.—A Certificate of Registry is not a document of Title. It does not necessarily contain notice of all changes of ownership, and in no case does it contain an official record of any mortgages affecting the ship. In case of any change of ownership it is important for the protection of the interests of all parties that the change should be registered according to law. Changes of ownership, address or other registered particulars should be notified to the Registrar at the Port of Registry. Should the Vessel be lost, sold to Foreigners, or broken up, notice thereof, together with the Certificate of Registry, if in existence, should immediately be given to the Registrar of British Ships at the Port of Registry under a Penalty of £100 for default.

C. 3468

Instruction to Registrars of British Ships, paragraphs 182-185 [illegible]

VALIDA HASTA EL 4 DE OCTUBRE DE 1985
Valid until the 4th october 1985
LEY 2 DEL 17 DE ENERO DE 1980
Law No.2 of 17th January 1980

REPUBLICA DE PANAMA
MINISTERIO DE HACIENDA Y TESORO
DIRECCION GENERAL DE CONSULAR Y DE NAVES
MARINA MERCANTE NACIONAL

DISTINTIVO DE LLAMADA CALL LETTERS	NUMERO OFICIAL REGISTRATION NO.
HO-9733	No. 7588-77-A

PATENTE PERMANENTE DE NAVEGACION
SERVICIO INTERNACIONAL

De acuerdo al cumplimiento de los requisitos estipulados en la Ley 8a. de 12 de enero de 1925, aprobados por Resuelto No. 1765 de 5 de OCTUBRE de 1981 expedido por esta Oficina SE AUTORIZA Y CONCEDE a la nave cuya características se detallan a continuación y la cual se dedicará exclusivamente al servicio de EXPLOTACION DE PETROLEO** la presente PATENTE PERMANENTE DE NAVEGACION para todos los fines respectivos que haya el Registro de la Marina Mercante de la República de Panamá.
**(BARCAZA)

In accordance with the requirements established by the Ordinance No.8, dated the 12th of January 1925, the registration requested in Resolution No. 1765, dated the 5 of OCTUBRE of 1981, has been approved by this office.
Therefore, the Panama Merchant Marine Registry hereby GRANTS AND AUTHORIZES this Permanent Registration of Navigation Certificate to the vessel, whose particulars are described below, and which will be used exclusively for EXPLOTACION DE PETROLEO

DATOS DE IDENTIFICACION DE LA NAVE
PARTICULARS OF THE VESSEL

NOMBRE DE LA NAVE: NAME OF THE VESSEL: "McDERMOTT DERRICK BARGE No.9"	PROPIETARIO Y DOMICILIO: OWNER'S NAME AND ADDRESS: McDERMOTT INCORPORATED
NOMBRE ANTERIOR: PREVIOUS NAME: McDERMOTT DERRICK BARGE No.9	REPRESENTANTE LEGAL Y DOMICILIO: NAME AND ADDRESS OF LEGAL REPRESENTATIVE: DURLING & DURLING
NACIONALIDAD QUE RENUNCIA PREVIOUS NATIONALITY: ESTADOS UNIDOS DE AMERICA	RESPONSABLE DE LAS CUENTAS DE RADIO Y DOMICILIO: NAME AND ADDRESS OF COMPANY RESPONSABLE FOR RADIO EXPENSES: LOS PROPIETARIOS

CONSTRUIDO EN: BUILT IN:	FECHA: DATED:	CONSTRUCTORES: BUILDERS:
AVONDALE, LOUISIANA	1955	AVONDALE MARINE WAYS, INC.

NUMERO DE: NUMBER OF:	MATERIAL DEL CASCO: MATERIAL OF THE HULL:	DIMENSIONES PRINCIPALES MAIN MEASUREMENTS	TONELAJE TONNAGE
CUBIERTAS DECKS: ----	ACERO	ESLORA LENGTH: 91.46 MTS.	BAJO CUBIERTA UNDER DECK: -------
MASTILES MASTS: -----		MANGA BREADTH: 27.44 MTS.	BRUTO GROSS: 4,416.89
CHIMENEAS FUNNEL: -------		PUNTAL DEPTH: 5.61 MTS.	NETO NET: 4,416.00

SERVICIO A QUE SE DEDICA LA NAVE
KIND OF SERVICE GIVEN BY THE VESSEL

CARGA SECA DRY CARGO	CARGA LIQUIDA LIQUID CARGO	PASAJEROS PASSENGERS	MIXTO MIXED	PESCA DE FISHING OF	DE SERVICIO DE KIND OF SERVICE
----	------	1A. CLASE 1ST. CLASS: ------- 2A. CLASE 2ND. CLASS: ------- 3A CLASE 3RD. CLASS: -------	-----	---------	EXPLOTACION DE PETROLEO (BARCAZA)

SISTEMA DE PROPULSION
PROPULSION SYSTEM

CLASE Y NUMERO DE MAQUINAS O MOTORES: TYPE AND NUMBER OF ENGINES: SIN PROPULSION PROPIA

NUMERO Y TIPO DE CILINDROS: NUMBER AND TYPE OF CYLINDERS: ----------

MARCA O NOMBRE DE LOS FABRICANTES: BRAND OR NAME OF MANUFACTURERS: ----------

VELOCIDAD DE LA NAVE: SPEED OF THE VESSEL: ---------- CABALLAJE HORSE POWER: ----------

La presente Patente Permanente debe ser cancelada y sustituida por otra en los casos que se describen al reverso de este documento.
The present Permanent Registration Certificate International Service should be cancelled and substituted by another one in cases that are described on the reverse of this document.

EXPEDIDA, FIRMADA Y SELLADA POR EL SUSCRITO: ISSUED, SIGNED, AND SEALED BY THE UNDERSIGNED
A. DR. HUGO TORRIJOS R.
DIRECTOR GENERAL
TITULO TITLE

A LOS DIAS: DATED: DIA MES AÑO / MONTH DAY YEAR
CINCO (5) DE OCTUBRE DE 1981

DERECHOS: LIQ. 33318 DEL 27/4/81 bder

No. 03783 B

EMPLOYMENT AGREEMENT
(HOURLY AND MANUAL MONTHLY EMPLOYEE)

DEFENDANT'S EXHIBIT 1

JON WILANDER (Name of Employee) 439-52-7266 (Social Security No) (Employee No)

McDermott International, Inc. (hereinafter referred to as "Employer") hereby offers you employment as a Foreman Crafts (Paint) #7640 in the Middle East area subject to the terms and conditions herein set forth. The term of your employment will be for an indefinite period not to exceed one year or job completion, beginning on the date of your authorized departure from the United States through your authorized departure from your work location, at a base rate of pay of:

Expatriation Premium	$ 10.85	per	hour
	$ 805.00	per	month
	$ _____	per	_____

Your hours of work will be those assigned to you by Employer.

Employer may terminate your employment without cause at any time without prior notice except where the reason for your termination is completion or cessation of the job, work or project to which you are assigned in which case Employer will give you 30 days notice prior to your termination where this is practicable.

If your services are terminated by reason of discharge for cause, or if you should terminate your employment by resignation or abandonment of your work prior to the maximum duration period of this agreement, no vacation

---

*Note: Per Personnel Notification form dated 7-27-83 this amount is incorrect.

allowance or contract-completion bonus is earned and none will be paid. Further, you will bear the cost of your return transportation to your home location.

All compensation and benefits provided by Employer shall cease at the time of your termination, except as may be specifically provided for or agreed upon. Employer assumes no duties or obligations except as set forth herein and as may be required by law.

Changes in this agreement will be valid only after they have been agreed upon mutually and confirmed in writing. The understandings set forth in this agreement supersede all contrary oral understandings or impressions you may have obtained in conversations with Employer representatives prior to the signing hereof.

In the event of accident or emergency, Employer is authorized to notify:

GEORGIA WILANDER	Wife
Name	Relationship if any
102 LAKE LANE LAKE CHARLES, LA	318-478-2369
Address	Telephone

I HEREBY ACCEPT EMPLOYMENT ON THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE ATTACHED PAGES.

/s/ Jon C. Wilander — 3-25-82
(Signature of Employee) — Date

/s/ F. M. Wagar
(Employer's Representative)

Date of Departure April 1, 1982

Date of Return _____

Attachments: PGS. 2,3,4,5 DRUG & NARCOTIC STATEMENT.

WORKMEN'S COMPENSATION

If you suffer an occupational illness or injury, you will receive voluntary benefits at least equal to those provided for in the Workmen's Compensation Act of the State of Louisiana.

PERMANENT ADDRESS

The address of the person to be notified in the event of an accident or emergency as shown on the first page of this Employment Agreement shall be considered as your permanent address or the address of the person in whose care the Employer may communicate with you. In the event of your death while outside the continental limits of the United States during that period of this service under this Agreement, the Employer shall attempt to communicate with the person at the given address and in the event no directions are received from such person within a reasonable time, or in the event you have left no written instructions with the Employer concerning the disposition of your body or personal effects, you authorize the Employer to make disposition of your body according to the law where you are employed at the time of your death and to return your personal effects to the Executor or Administrator of your estate, or to the person named at the permanent address as appears to best expeditiously handle such matters.

DISCLOSURE OF INFORMATION

Employee hereby agrees that he will not, except with the prior written consent of Employer make directly or indirectly any statement publicly whether to the press or in books, magazines, and periodicals or by advertisement or by radio, television or film or by any other medium with respect to matters relative to the operations of the Company with whom the Employer is working, or with respect to matters of a political nature which might impair the relations of the Employer. Employer's customers or subcontractors, or any other companies with whom the Employer is working or with any governments in the local area.

DEDUCTIONS – INCOME, F.I.C.A. AND OTHER TAXES

The employee hereby acknowledges his responsibility for payment of income taxes of the United States and of the country in which he is located. The Company has a plan of tax equalization (copy of which is available for inspection by the employee) which attempts to provide insofar as practicable that an eligible employee will pay no greater income tax, world wide, as a result of his Company employment, than if the employee had remained in the United States. The Plan's basic purpose is to maintain the various foreign allowances on a tax-free basis to the employee and to protect him from covered foreign tax rates which exceed the U.S. level of taxation. The Company, however, reserves the right to terminate or modify the plan at any time provided that, absent unusual circumstances the Company would not make any such termination or modification effective prior to the beginning

of the calendar year following the year in which the decision to terminate or modify the plan is announced.

Under no circumstances will the Company be liable for any taxes for which you may become liable while you are on foreign assignment.

PHYSICAL EXAMINATION

You agree to submit to a physical examination prior to leaving your place of overseas employment or upon termination of your employment, by a physician selected by the Employer.

PROCESSING

You agree to have completed the following items prior to your departure from the United States:

1) Procurement of a valid passport from the United States of America, Visa Travel, or Work Permit; and

2) a physical examination to certify your fitness to perform the duties to which you will be assigned.

You will be paid one day's pay of eight (8) hours for each actual day of processing as determined by the Employer. This processing pay will be at your base rate.

MIDDLE EAST
HOURLY EMPLOYEES

TRANSPORTATION

The Employer will furnish air transportation for you from your home location to your work site. Subject to the conditions set forth herein, return transportation will be

furnished if you proceed directly to the United States upon completion of this Agreement.

The Employer may at its option deduct the cost of excess luggage from your pay. If you make a request at least seven (7) days prior to the date of departure the Employer may, at its option, grant you permission to ship air freight, at its expense, up to thirty (30) additional pounds of luggage.

The Employer will have the option of withholding *One Hundred Fifty Dollars (150.00)* from each of your first *six* full pay periods as a cash deposit for the payment of your return transportation in the event you should become obligated for its payment. If the cost of the return transportation is greater than the amount withheld, the excess will be deducted from your final wage payment and/or other monies due you. The amount withheld will be included in your final check, if you are not responsible for your return transportation.

HOURS OF WORK

You will receive your base rate of pay for eight (8) hours per day, *seven* days per week when you are available for work. Any time worked in excess of eight (8) hours in one day shall be paid at one and one-half (1-1/2) times the hourly base rate. You agree to work such hours as may be assigned by the Employer. No pay will be made for any day of absence from work unless excused by the Employer. If at any time during the course of your employment you are absent from work on any given day through your willful neglect, the Employer, at its option, may elect not to pay you the normal day's pay for this

unauthorized absence. This type of unauthorized absence may be considered as cause for termination of your contract by Employer.

EXPATRIATION PREMIUM

You will receive an Expatriation Premium as shown on page one (1) of this Agreement when you are available for work.

CONTRACT COMPLETION BONUS

A Contract-Completion Bonus of twenty-five per cent (25%) on the total straight time portion of your pay (which is total hours worked inclusive of time off and time off not taken hours times base rate of pay) will be paid on completion of this Agreement, subject to the conditions set forth on Page 1 of this Agreement.

VACATION

You will be entitled to a credit of two and one-half (2-1/2) calender days of vacation for each full calender month of service rendered, subject to the conditions set forth on Page 1 of this Agreement. Your vacation time will be paid on the basis of eight (8) hours per day at the base hourly rate and you agree to take your vacation upon satisfactory completion of your work. You will assume the responsibility regarding the use of vacation time to maintain your tax status under United States Federal Income Tax Laws.

MIDDLE EAST
HOURLY EMPLOYEES
30 ON – 10 OFF

TIME OFF

You will be allowed ten (10) days off every thirty (30) days worked under this Agreement. On all local time off periods, the Employer will provide you with transportation from your work area to a rest area designated by the Employer. At the rest area, the Employer will provide accommodations and meals. Depending upon the work schedule and the necessity of maintaining continuity of operations at the job site, the Employer may elect for you to continue working without time off at its discretion. Should the Employer elect that you work, you will be paid an additional eight (8) hours per day at your straight time rate with all applicable bonuses for each day off not allowed. If the Employer requires you to work your scheduled time off, it shall be your responsibility to see that your supervisor prepares and signs the time ticket for the additional hours given for working during the time off period. This signed time ticket must be submitted by your supervisor to the respective regional administrative office or you will not be entitled to pay for working your time off. The aforementioned ten (10) days does not include travel time to and from the job site to the local designated time off location. You will not be paid for any transportation to and from the work area unless you actually take time off and these expenses are incurred.

Employment Agreements for a minimum of six (6) months duration but less than one (1) year qualify for one trip to Athens as outlined in Plan 2. If you are employed on the basis of a one year Employment Agreement, a

choice of time off plans as outlined below must be made by you prior to your departure for the work area:

PLAN 1:

During your employment under this Agreement you may elect to work a minimum of ninety (90) days whereby you would then earn thirty (30) time off days and air transportation at the lowest applicable rate from your work area to your home location and return. The air transportation can be earned only once during your contract period. The aforementioned thirty (30) days does not include travel time to and from the job site to the local designated departure location, but is inclusive of travel time from the local designated departure location to your home location and return to the local designated departure location. It is your responsibility to ascertain the date you are required to return to your local designated departure location prior to your departure for your thirty (30) days off and have firm return trip airline reservations made prior to your departure for home. Any extension of time taken by you in your home location must be, first of all, approved by local management and will, if approved be without pay. Should the airline ticket the Company has provided you with expire, you will be charged with the additional cost, if any, incurred to return you to the work area. An unauthorized extension of time may be considered as grounds for terminating you for cause. You will not be paid for any transportation to and from the work area unless you actually take time off and these expenses are incurred. You may start working the ninety

(90) days from the first day of your employment, however, the thirty (30) days time off period and air transportation must be utilized after the third month and before the beginning of the tenth month of employment. The first thirty (30) days of earned time off not taken will be paid to you as time off taken pay during your thirty (30) day trip to your home location or, if at termination of this Agreement no home trip has been taken, you will be paid for all time off not taken days. The trip to your home location is contingent upon the work requirements in the area and will be rescheduled or cancelled should the work load dictate. No cash in lieu (or cash equivalent) of the unused airline ticket will be paid. If the trip is cancelled, the Employer will pay you an additional eight (8) hours per day at your straight time rate with all applicable bonuses for the thirty (30) days disallowed. There will be no per diem paid for the thirty (30) days spent in your home location.

MIDDLE EAST HOURLY EMPLOYEES TIME-OFF (30/10)

In addition, twice during the period of this Agreement, the Employer, at its discretion, will provide you with transportation at excursion rates from the work area to Athens, Greece and return. The duration of the excursion is ten (10) days each trip. While in Athens for the ten (10) day period, the Employer will pay you a per diem allowance of $12.50 per day for meals and $12.50 per day for lodging.

With Employer approval, in lieu of a trip to Athens, you may elect to use up to the total value of the airline ticket to and from Athens to a location of your choice. In such

case, the same provisions as set forth above relative to an excursion to Athens will apply, including duration, and pay for food and lodging. In lieu of taking an excursion as provided for herein, you may use the value of your airline ticket for dependents (defined as spouse and dependent children) to travel to and from the work location. No cash reimbursement will be given for any portion of the per day allowance or airline tickets not used. The allowance and tickets may not be deferred to another contract period.

While on time off, you will be paid for eight (8) hours per day at your straight time rate.

When you leave the work area during any time off period, the Employer shall have no responsibility for you and shall have no liability for any injury or illness suffered by you from the time of your departure from the work area until your return.

OR

PLAN 2:

Three (3) times during the period of this Agreement, the Employer will provide you with transportation at excursion rates from the work area to Athens and return. The duration of the excursion is ten (10) days each trip. While in Athens for the ten (10) day period, the Employer will pay you a per diem allowance of $12.50 per day for meals and $12.50 per day for lodging. Under this plan, you will not be allowed to return to your home location at Company expense.

With Employer approval, in lieu of a trip to Athens, you may elect to use up to the total value of the airline ticket to and from Athens to a location of your choice. In such case, the same provisions as set forth above relative to an excursion to Athens will apply, including duration, and pay for food and lodging. In lieu of taking an excursion as provided for herein, you may use the value of your airline ticket for your dependents (defined as spouse and dependent children) to travel to and from the work location. No cash reimbursement will be given for any portion of the per day allowance or airline tickets not used. The allowance and tickets may not be deferred to another contract period.

While on time off, you will be paid for eight (8) hours per day at your straight time rate.

When you leave the work area during any time off period, the Employer shall have no responsibility for you and shall have no liability for any injury or illness suffered by you from the time of your departure from the work area until your return.

I ACCEPT PLAN 1 YES PLAN 2 ___ AND REALIZE THAT I WILL NOT BE ABLE TO CHANGE TIME OFF PLANS DURING THE COURSE OF THIS EMPLOYMENT AGREEMENT UNLESS APPROVED BY EMPLOYER.

/s/ Jon C. Wilander — 3-25-82
SIGNATURE OF EMPLOYEE — DATE

USE OR POSSESSION OF DRUGS OR NARCOTICS

This policy is for the safety of the employee and his family, possible protection of the employee from foreign legal action, and the protection of the Company.

It is the Company's policy not to condone the use, possession or selling of non-prescription drugs or narcotics considered dangerous or illegal by the U. S. Department of Justice or of authorities at the foreign location, or the arrival on Company property under the influence of such materials. If any employee is involved in any such a circumstance, immediate termination of employment will result.

In addition, any employee taking prescribed medication will be required to present a note from a physician, the length of time the employee is to continue taking the medication, and a statement that the employee should be able to work while under such medication without posing danger to himself or to other employees. In keeping with this policy, periodic searches of Company premises and equipment as well as personal belongings will be made.

The laws of many foreign countries in which the Company operates have extremely severe drug laws which include the death penalty for some of the above circumstances. It is understood that if you and/or your family violate any of the foreign countries' drug laws, the Company and your embassy, high commission or counsel are virtually powerless to come to your aid.

We regret any inconvenience that the implementation of this policy may cause, but the protection of your health and safety certainly warrants this.

READ, UNDERSTOOD AND ACCEPTED

3-25-82 — /s/ Jon C. Wilander
DATE — SIGNATURE OF EMPLOYEE

NAME—NOM
JON CHARLES WILANDER

SEX—SEXE: M
BIRTHPLACE—LIEU DE NAISSANCE: TEXAS, U.S.A.

BIRTH DATE—DATE DE NAISSANCE: OCT. 23, 1938
ISSUE DATE—DATE DE DELIVRANCE: MARCH 25, 1982

WIFE/HUSBAND—EPOUSE/EPOUX: X X X
EXPIRES ON—EXPIRE LE: MARCH 24, 1987

MINORS—ENFANTS MINEURS: X X X

Jon C. Wilander
SIGNATURE OF BEARER—SIGNATURE DU TITULAIRE

IMPORTANT: THIS PASSPORT IS NOT VALID UNTIL SIGNED BY THE BEARER.
PERSONS INCLUDED HEREIN MAY NOT USE THIS PASSPORT FOR TRAVEL
UNLESS ACCOMPANIED BY THE BEARER.

5

Amendments and Endorsements
Modifications et Mentions Spéciales

NOTICE

This passport must not be used by any person other than the person to whom it is issued or in violation of the conditions or restrictions placed thereon or in violation of the rules regarding the issuance of passports. Any willful violation of these laws and regulations will subject the offender to prosecution under Title 18, United States Code, Section 1544.

IF ISSUED OUTSIDE THE UNITED STATES THE FOLLOWING SECTION MUST BE COMPLETED BY THE ISSUING AUTHORITY.

PASSPORT ISSUED AT—PASSEPORT DELIVRE A

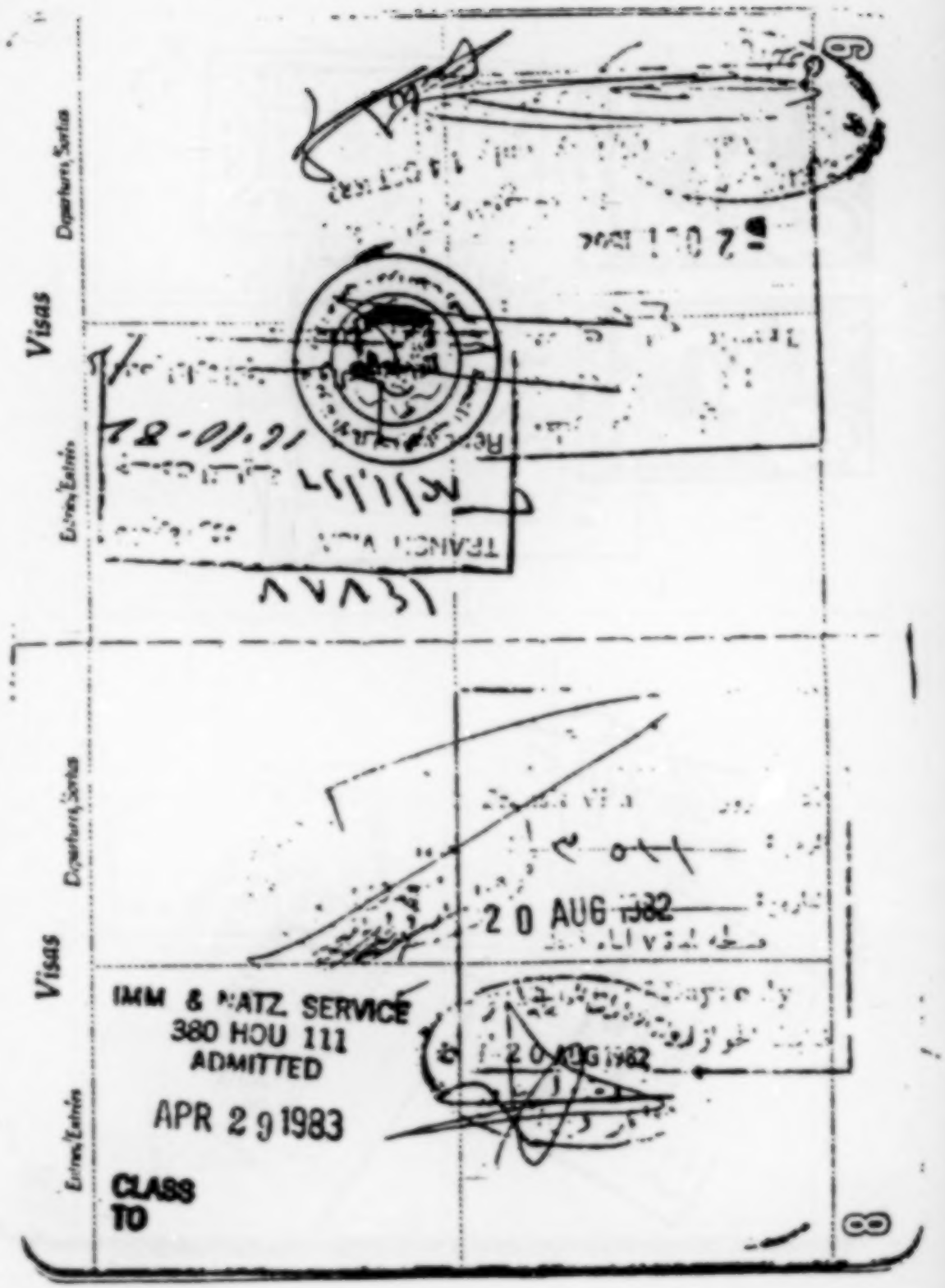
CITY AND COUNTRY—VILLE ET PAYS

SIGNATURE—SIGNATURE

TITLE—TITRE

4


Visas
Departure/Sortie
Entry/Entrée
19 JUL 1982
-2 APR 1982
IMMIGRATION OFFICER
-2 APR 1982
HEATHROW (3)
INTEREST SVERIGE
1982-07-19
IF IS THE RESPONSIBILITY OF THE PASSPORT BEARER TO OBTAIN THE NECESSARY VISAS.
LE TITULAIRE DU PASSEPORT EST SEUL RESPONSABLE DE L'OBTENTION DES VISAS REQUIS.
6


Visas
Departure/Sortie
Entry/Entrée
20 AUG 1982
IMM & NATZ. SERVICE
380 HOU 111
ADMITTED
APR 29 1983
CLASS
TO
8

Visas

Entries/Entrées

Departures/Sorties

16 AUG. 1982
SCHIPHOL

-6 MAY 1983

1 DINAR

1 DINAR

10

11

48

Visas

Entries/Entrées

Departures/Sorties

Visas

Entries/Entrées

Departures/Sorties

12

13

49

Visas		Visas	
Entries/Entrées	Departures/Sorties	Entries/Entrées	Departures/Sorties
		IMMIGRATION BANGKOK A 38 VISA CLASS ADMITTED 08 NOV 1982 UNTIL SIGNED 22 NOV 1982	
			DEPARTED 10 NOV
		IMMIGRATION BANGKOK A. 09 VISA CLASS ADMITTED 13 JUN 1983 UNTIL 27 JUN 1983 SIGNED	
			A 79 DEPARTED 22 JUN 1983 BANGKOK
14			15

50

Visas		Visas	
Entries/Entrées	Departures/Sorties	Entries/Entrées	Departures/Sorties
20			21

51

Visas
Departure/Arrival
Entry/Exit
RESIDENCE
U.A.E.
تعتبر الاقامة لاغية اذا تجاوز حاملها
الاقامة خارج دولة الامارات مدة ستة اشهر.
Residence Permit becomes invalid if
bearer resides out of the U. A. E.
more than six months.
22
23

VALIDA HASTA EL 26 DE ABRIL DE 1986
Valid until the 26th april 1986
LEY 2 DEL 17 DE ENERO DE 1980
Law No.2 of 17th January 1980

REPUBLICA DE PANAMA
MINISTERIO DE HACIENDA Y TESORO
DIRECCION GENERAL DE CONSULAR Y DE NAVES
MARINA MERCANTE NACIONAL
PATENTE PERMANENTE DE NAVEGACION
SERVICIO INTERNACIONAL

DISTINTIVO DE LLAMADA CALL LETTERS	NUMERO OFICIAL REGISTRATION NO.
HO-9732	No. 8209-77-A

De acuerdo al cumplimiento de los requisitos estipulados en la Ley 8a. de 12 de enero de 1925, aprobados por Resuelto No. 908 de 23 de ABRIL de 19x 82 expedido por esta Oficina SE AUTORIZA Y CONCEDE a la nave cuya características se detallan a continuación y la cual se dedicará exclusivamente al servicio de EXPLORACION DE PETROLEO la presente PATENTE PERMANENTE DE NAVEGACION para los fines respectivos que otorga el Registro de la Marina Mercante de la República de Panamá.

In accordance with the requirements established by the Ordinance No.8, dated the 12th of January 1925, the registration requested in Resolution No. 908 dated the 23rd of APRIL of 19x82, has been approved by this office. Therefore the Panama Merchant Marine Registry hereby GRANTS AND AUTHORIZES this Permanent Registration of Navigation Certificate to the vessel whose particulars are described below, and which will be used exclusively for EXPLORATION OF PETROLEUM.

DATOS DE IDENTIFICACION DE LA NAVE
PARTICULARS OF THE VESSEL

NOMBRE DE LA NAVE: NAME OF THE VESSEL: McDERMOTT DERRICK BARGE No.7	PROPIETARIO Y DOMICILIO: OWNER'S NAME AND ADDRESS: McDERMOTT INCORPORATED
NOMBRE ANTERIOR: PREVIOUS NAME: McDERMOTT DERRICK BARGE No.7	REPRESENTANTE LEGAL Y DOMICILIO: NAME AND ADDRESS OF LEGAL REPRESENTATIVE: DURLING & DURLING
NACIONALIDAD QUE RENUNCIA PREVIOUS NATIONALITY: ESTADOUNIDENSE	RESPONSABLE DE LAS CUENTAS DE RADIO Y DOMICILIO: NAME AND ADDRESS OF COMPANY RESPONSABLE FOR RADIO EXPENSES: LOS PROPIETARIOS
CONSTRUIDO EN: BUILT IN: AVONDALE, LOUISIANA	FECHA: DATED: 1953
CONSTRUCTORES: BUILDERS: AVONDALE MARINEWAYS, INC.	

NUMERO DE: NUMBER OF:	MATERIAL DEL CASCO: MATERIAL OF THE HULL:	DIMENSIONES PRINCIPALES MAIN MEASUREMENTS	TONELAJE TONNAGE
CUBIERTAS DECKS UNA	ACERO	ESLORA LENGTH 91.44 MTS.	BAJO CUBIERTA UNDER DECK 3,055.04
MASTILES MASTS -----		MANGA BREADTH 27.43 MTS.	BRUTO GROSS 3,203.63
CHIMENEAS FUNNEL -----		PUNTAL DEPTH 5.61 MTS.	NETO NET 2,438.00

SERVICIO A QUE SE DEDICA LA NAVE
KIND OF SERVICE GIVEN BY THE VESSEL

CARGA SECA DRY CARGO	CARGA LIQUIDA LIQUID CARGO	PASAJEROS PASSENGERS	MIXTO MIXED	PESCA DE FISHING OF	DE SERVICIO DE KIND OF SERVICE
-----	-------	1A. 1ST CLASE CLASS -------	-----	-------	EXPLORACION DE PETROLEO
		2A. 2ND CLASE CLASS -------			
		3A 3RD CLASE CLASS -------			

SISTEMA DE PROPULSION
PROPULSION SYSTEM

CLASE Y NUMERO DE MAQUINAS O MOTORES: TYPE AND NUMBER OF ENGINES: SIN PROPULSION PROPIA

NUMERO Y TIPO DE CILINDROS: NUMBER AND TYPE OF CYLINDERS: ----------

MARCA O NOMBRE DE LOS FABRICANTES: BRAND OR NAME OF MANUFACTURERS: ----------

VELOCIDAD DE LA NAVE: SPEED OF THE VESSEL: ---------- CABALLOS DE FUERZA: HORSE POWER: ----------

La presente Patente Permanente debe ser cancelada y sustituida por otra en los casos que se describen al reverso de este documento.

The present Permanent Registration Certificate International Service should be cancelled, substituted by another one in cases that are described on the reverse of this document

EXPEDIDA, FIRMADA Y SELLADA POR EL SUSCRITO: ISSUED, SIGNED, AND SEALED BY THE UNDERSIGNED

DR. HUGO TORRIJOS R.
DIRECTOR GENERAL
TITLE

A LOS DIAS: DATED: VEINTISIETE (27) DE ABRIL DE 1982
DIA MES AÑO DAY MONTH YEAR

DERECHOS: LIQ. 35111 DEL 6/7/81 11dg

DEFENDANTS EXHIBIT 2

EMPLOYMENT AGREEMENT
(HOURLY AND MANUAL MONTHLY EMPLOYEES)

JON C. WILANDER (Name of Employer) 439-52-7266 (Social Security No) 4612 (Employee No)

McDERMOTT INTERNATIONAL, INC. (hereinafter referred to as "Employer") hereby offers you employment as a Foreman – Crafts 7640 in the Middle East Area subject to the terms and conditions herein set forth. The term of your employment will be for an indefinite period not to exceed One Year or Job Completion, beginning on the date of your authorized departure from the United States through your authorized departure from your work location, at a base rate of pay of:

Base Rate of Pay	$ 10.85*	per	hour
Expatriation Premium (30%)	$ 805.00	per	month
	$	per	

Your hours of work will be those assigned to you by Employer.

Employer may terminate your employment without cause at any time without prior notice except where the reason for your termination is completion or cessation of the job, work or project to which you are assigned in which case Employer will give you 30 days notice prior to your termination where this is practicable.

If your services are terminated by reason of discharge for cause, or if you should terminate your employment by resignation or abandonment of your work prior to the

*Note: Per Personnel Notification Form dated 7-27-83 this amount is incorrect.

maximum duration period of this agreement, no vacation allowance or contract-completion bonus is earned and none will be paid. Further, you will bear the cost of your return transportation to you home location.

All compensation and benefits provided by Employer shall cease at the time of your termination, except as may be specifically provided for or agreed upon. Employer assumes no duties or obligations except as set forth herein and as may be required by law.

Changes in this agreement will be valid only after they have been agreed upon mutually and confirmed in writing. The understandings set forth in this agreement supersede all contrary oral understandings or impressions you may have obtained in conversations with Employer representatives prior to the signing hereof.

In the event of accident or emergency, Employer is authorized to notify:

Mrs. Georgia Wilander	Wife
Name	Relationship if any
102 Lake Lane Lake Charles, Louisiana	318-478-2369
Address	Telephone

I HEREBY ACCEPT EMPLOYMENT ON THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE ATTACHED PAGES.

Jon C. Wilander	83 04 02
(Signature of Employee)	Date
illegible	
(Employer's Representative)	DANIEL R. GAUBERT Group Controller

Date of Departure May 07, 1983

Date of Return _____

Attachments: Pages 2,3,4 & 5

WORKMAN'S COMPENSATION

If you suffer an occupational illness or injury, you will receive voluntary benefits at least equal to those provided for in the Workmen's Compensation Act of the State of Louisiana.

PERMANENT ADDRESS

The address of the person to be notified in the event of an accident or emergency as shown on the first page of this Employment Agreement shall be considered as your permanent address or the address of the person in whose care the Employer may communicate with you. In the event of your death while outside the continental limits of the United States during the period of this service under this Agreement, the Employer shall attempt to communicate with the person at the given address, and in the event no directions are received from such person within a reasonable time, or in the event you have left no written instructions with the Employer concerning the disposition of your body or personal effects, you authorized the Employer to make disposition of your body according to the law where you are employed at the time of your death and return your personal effects to the Executor or Administrator of your estate, or to the person named at the permanent address as appears to best expeditiously handle such matters.

DISCLOSURE OF INFORMATION

Employee hereby agrees that he will not, except with the prior written consent of Employer, make directly or indirectly any statement publicly whether to the press or in books, magazines, and periodicals or by advertisement or by radio, television or film or by any other medium with respect to matters relative to the operations of the Company with whom the Employer is working, or with respect to matters of a political nature which might impair the relations of the Employer, Employer's customers or subcontractors, or any other companies with whom the Employer is working or with any governments in the local area.

DEDUCTIONS – INCOME, F. I.C.A. AND OTHER TAXES

The employee hereby acknowledges his responsibility for payment of income taxes of the United States and of the country in which he is located. The Company has a plan of tax equalization (copy of which is available for inspection by the employee) which attempts to provide insofar as practicable that an eligible employee will pay no greater income tax, world wide, as a result of his Company employment, than if the employee had remained in the United States. The Plan's basic purpose is to maintain the various foreign allowances on a tax-free basis to the employee and to protect him from covered foreign tax rates which exceed the U.S. level of taxation. The Company, however, reserves the right to terminate or modify the plan at any time provided that, absent unusual circumstances, the Company would not make any such termination or modification effective prior to the beginning

of the calender year following the year in which the decision to terminate or modify the plan is announced.

Under no circumstances will the Company be liable for any taxes for which you may become liable while you are on foreign assignment.

PHYSICAL EXAMINATION

You agree to submit to a physical examination prior to leaving your place of overseas employment or upon termination of your employment, by a physician selected by the Employer.

PROCESSING

You agree to have completed the following items prior to your departure from the United States:

1) Procurement of a valid passport from the United States of America, Visa Travel, or Work Permit; and
2) a physical examination to certify your fitness to perform the duties to which you will be assigned.

You will be paid one day's pay of eight (8) hours for each actual day of processing as determined by the Employer. This processing pay will be at your base rate.

HOURLY EMPLOYEES

TRANSPORTATION

The Employer will furnish all transportation for you from your home location to your work site. Subject to the

conditions set forth herein, return transportation will be furnished if you proceed directly to the United States upon completion of this Agreement.

The Employer may at its option deduct the cost of excess luggage from your pay. If you make a request at least seven (7) days prior to the date of departure the Employer may, at its option, grant you permission to ship air freight, at its expense, up to thirty (30) additional pounds of luggage.

The Employer will have the option of withholding Dollars One Hundred & Seventy Five ($ 175.00) from each of your first Six full pay periods as a cash deposit for the payment of your return transportation in the event you should become obligated for its payment. If the cost of the return transportation is greater than the amount withheld, the excess will be deducted from your final wage payment and/or other monies due you. The amount withheld will be included in your final check, if you are not responsible for your return transportation.

HOURS OF WORK

You will receive your base rate of pay for eight (8) hours per day, 7 days per week when you are available for work. Any time worked in excess of eight (8) hours in one day shall be paid at one and one-half (1½) times the hourly base rate. You agree to work such hours as may be assigned by the Employer. No pay will be made for any day of absence from work unless excused by the Employer. If at any time during the course of your employment you are absent from work on any given day through your willful neglect, the Employer, at its option,

may elect not to pay you the normal day's pay for this unauthorized absence. This type of unauthorized absence may be considered as cause for termination of your contract by Employer.

EXPATRIATION PREMIUM

You will receive an Expatriation Premium as shown on page one (1) of this Agreement when you are available for work.

CONTRACT COMPLETION BONUS

A Contract-Completion Bonus of twenty-five per cent (25%) on the total straight time portion of your pay (which is total hours worked inclusive of time off and time off not taken hours times base rate of pay) will be paid on completion of this Agreement, subject to the conditions sar [sic] forth on Page 1 of this Agreement.

VACATION

You will be entitled to a credit of two and one-half (2½) calendar days of vacation for each full calendar month of service rendered, subject to the conditions set forth on Page 1 of this Agreement. Your vacation time will be paid on the basis of eight (8) hours per day at the base hourly rate and you agree to take your vacation upon satisfactory completion of your work. You will assume the responsibility regarding the use of vacation time to maintain your tax status under United States Federal Income Tax Laws.

MIDDLE EAST
HOURLY EMPLOYEES
30 ON – 10 OFF

TIME OFF

You will be allowed ten (10) days off every thirty (30) days worked under this Agreement. On all local time off periods, the Employer will provide you with transportation from your work area to a rest area designated by the Employer. At the rest area, the Employer will provide accommodations and meals. Depending upon the work schedule and the necessity of maintaining continuity of operations at the job site, the Employer may elect for you to continue working without time off at its discretion. Should the Employer elect that you work, you will be paid an additional eight (8) hours per day at your straight time rate with all applicable bonuses for each day off not allowed. If the Employer requires you to work your scheduled time off, it shall be your responsibility to see that your supervisor prepares and signs the time ticket for the additional hours given for working during the time off period. This signed time ticket must be submitted by your supervisor to the respective regional administrative office or you will not be entitled to pay for working your time off. The aforementioned ten (10) days does not include travel time to and from the job site to the local designated time off location. You will not be paid for any transportation to and from the work area unless you actually take time off and these expenses are incurred.

Employment Agreements for a minimum of six (6) months duration but less than one (1) year qualify for one trip to Athens as outlined in Plan 2. If you are employed

on the basis of a one year Employment Agreement, a choice of time off plans as outlined below must be made by you prior to your departure for the work area:

PLAN 1:

During your employment under this Agreement you may elect to work a minimum of ninety (90) days whereby you would then earn thirty (30) time off days and air transportation at the lowest applicable rate from your work area to your home location and return. The air transportation can be earned only once during your contract period. The aforementioned thirty (30) days does not include travel time to and from the job site to the local designated departure location, but is inclusive of travel time from the local designated departure location to your home location and return to the local designated departure location. It is your responsibility to ascertain the date you are required to return to your local designated departure location prior to your departure for your thirty (30) days off and have firm return trip airline reservations made prior to your departure for home. Any extension of time taken by you in your home location must be, first of all, approved by local management and will, if approved be without pay. Should the airline ticket the Company has provided you with expire, you will be charged with the additional cost, if any, incurred to return you to the work area. An unauthorized extension of time may be considered as grounds for terminating you for cause. You will not be paid for any transportation to and from the work area unless you actually take time off and these expenses are incurred. You may start working the ninety

(90) days from the first day of your employment, however, the thirty (30) days time off period and air transportation must be utilized after the third month and before the beginning of the tenth month of employment. The first thirty (30) days of earned time off not taken will be paid to you as time off taken pay during your thirty (30) day trip to your home location or, if at termination of this Agreement no home trip has been taken, you will be paid for all time off not taken days. The trip to your home location is contingent upon the work requirements in the area and will be rescheduled or cancelled should the work load dictate. No cash in lieu (or cash equivalent) of the unused airline ticket will be paid. If the trip is cancelled, the Employer will pay you an additional eight (8) hours per day at your straight time rate with all applicable bonuses for the thirty (30) days disallowed. There will be no per diem paid for the thirty (30) days spent in your home location.

MIDDLE EAST HOURLY EMPLOYEES TIME-OFF (30/10)

In addition, twice during the period of this Agreement, the Employer, at its discretion will provide you with transportation at excursion rates from the work area to Athens, Greece and return. The duration of the excursion is ten (10) days each trip. While in Athens for the ten (10) day period, the Employer will pay you a per diem allowance of $12.50 per day for meals and $12.50 per day for lodging.

With Employer approval, in lieu of a trip to Athens, you may elect to use up to the total value of the airline ticket

to and from Athens to a location of your choice. In such case, the same provisions as set forth above relative to an excursion to Athens will apply, including duration, and pay for food and lodging. In lieu of taking an excursion as provided for herein, you may use the value of your airline ticket for dependents (defined as spouse and dependent children) to travel to and from the work location. No cash reimbursement will be given for any portion of the per day allowance or airline tickets not used. The allowance and tickets may not be deferred to another contract period.

While on time off, you will be paid for eight (8) hours per day at your straight time rate.

When you leave the work area during any time off period, the Employer shall have no responsibility for you and shall have no liability for any injury or illness suffered by you from the time of your departure from the work area until your return.

OR

PLAN 2:

Three (3) times during the period of this Agreement, the Employer will provide you with transportation at excursion rates from the work area to Athens and return. The duration of the excursion is ten (10) days each trip. While in Athens for the ten (10) day period, the Employer will pay you a per diem allowance of $12.50 per day for meals and $12.50 per day for lodging. Under this plan, you will not be allowed to return to your home location at Company expense.

With Employer approval, in lieu of a trip to Athens, you may elect to use up to the total value of the airline ticket to and from Athens to a location of your choice. In such case, the same provisions as set forth above relative to an excursion to Athens will apply, including duration, and pay for food and lodging. In lieu of taking an excursion as provided for herein, you may use the value of your airline ticket for your dependents (defined as spouse and dependent children) to travel to and from the work location. No cash reimbursement will be given for any portion of the per day allowance or airline tickets not used. The allowance and tickets may not be deferred to another contract period.

While on time off, you will be paid for eight (8) hours per day at your straight time rate.

When you leave the work area during any time off period, the Employer shall have no responsibility for you and shall have no liability for any injury or illness suffered by you from the time of your departure from the work area until your return.

I ACCEPT PLAN 1 ✓ PLAN 2 ___ AND REALIZE THAT I WILL NOT BE ABLE TO CHANGE TIME OFF PLANS DURING THE COURSE OF THIS EMPLOYMENT AGREEMENT UNLESS APPROVED BY EMPLOYER.

/s/ Jon C. Wilander — April 02, 1983
SIGNATURE OF EMPLOYEE — DATE

USE OR POSSESSION OF DRUGS OR NARCOTICS

This policy is for the safety of the employee and his family, possible protection of the employee from foreign legal action, and the protection of the Company.

It is the Company's policy not to condone the use, possession or selling of non-prescription drugs or narcotics considered dangerous or illegal by the U.S. Department of Justice or of authorities at the foreign location, or the arrival on Company property under the influence of such materials. If any employee is involved in any such a circumstance, immediate termination of employment will result.

In addition, any employee taking prescribed medication will be required to present a note from a physician stating the name of the medication, the length of time and the employee is to continue taking the medication, and a statement that the employee should be able to work while under such medication without posing danger to himself or to other employees. In keeping with this policy, periodic searches of Company premises and equipment as well as personal belongings will be made.

Many foreign countries in which the Company operates have extremely severe drugs laws which include the death penalty for some of the above circumstances. It is understood that if you and/or your family violate any of the foreign countries' drug laws, the Company and your embassy, high commission or consul are virtually powerless to come to your aid.

We regret any inconvenience that the implementation of the policy may cause, but the protection of your health and safety certainly warrants this.

READ, UNDERSTOOD AND ACCEPTED

April 02, 1983 — Jon C. Wilander
DATE — SIGNATURE OF EMPLOYEE

HEALTH CARE COVERAGE

All Health Care Benefits provided by Employer shall cease on the last day of the month of termination. Following a contract completion (not including broken contracts), participating expatriates who will return to work immediately following the expiration of their accrued vacation time will be provided with an automatic extension of Group Health Coverage for an additional month. The only acceptable proof that an employee will return to work for the company is a new fully executed employment contract and/or written notification to the NOLA Employee Benefits Department by the respective personnel group. Employee contribution will, of course, be required for the additional month of coverage. For those employees not qualifying for the automatic extension of Group Health Coverage, we have an arrangement with the Travelers Insurance Company for a Group Health Conversion Plan. Your local personnel office can assist you should you desire this type of coverage.

READ, UNDERSTOOD &
ACCEPTED

/s/ Jon C. Wilander
SIGNATURE

April 02, 1983
DATE

MAY 12, 1983

Hello My Love

This first letter to you, is being written from the "DB-7", my home for awhile. This barge is no better, nor worse than some of the other barges I have lived on, so I'm O.K.

I miss you, Baby and I love you dearly. Believe me, I am already counting the days.

When I arrived on this barge, my old friend, Jim Shields was waiting for my helicopter, to greet me and he had saved room in his cabin (Captains Cabin) for me so I have gotten the "Red Carpet" treatment since I arrived. I spoke with him about Don Gaspard, and he will help as much as he can, which is quite a lot.

My Baby, I enjoyed being with you during our vacation and I can hardly wait to see you again, in Spain.

Write, and tell me all about your arrangements.

Sugar, the DB-7 is going into Dubai on the 29th of May, for repairs, but my men and I will stay off-shore on a boat until another barge comes out. So, for an address use "Mc Dermott-Dubai Offshore" it should reach me alright.

Another short letter, I know, but I will write often.

Tell my "Deep-Sea fishing buddy" that I love him and I will write him a letter soon.

I love you, Baby

Jon

MAY 23, 1983

Hello My Love

I sure miss you, Sugar, and I am counting the days till we are together Again.

Sugar, I want you to understand, why this is only my second letter to you. Since I have been here on the DB-7, the boat Arriving tomorrow is only the second boat since my return. So, the opportunity to mail letters is very limited. I have not yet recieved a letter from you, my Love, but I am sure something will Arrive soon. The first month back is very difficult.

Baby, the DB-7 is leaving this Field And is going into dry-dock in Dubai, which means that my men and I will ~~[illegible]~~ be living Aboard A work boat called the "Force Tide" (I mentioned All this in my first letter) we have Added A Radio shack to the Equipment on board the boat and it is my hope, that I will be able to call you and hear your sweet voice. It will All depend on the Quality of the Radio and the weather, but I will do my very best to reach you.

Tell my son, Grant, that I love him very much.

I love you with All my Heart

Love

June 7, 1983
M.V. Force Tide

Hello My Baby,

I'm still working off the "M.V. Force Tide rather than a barge, and, My Love, I've tried to call you several times, but our radio is not strong enough to reach the operator in Miami. So, I will have to reach you when the barge comes back into the field.

I have not recieved another letter from you, so I'm still in the dark concerning your plans and arrangements. Write soon, Baby.

I love you and miss you, My Baby. The days and nights are very long and lonesome. I am still counting the days until I can hold you again.

The job is going Alright and the weather is very hot and the seas are calm. Things here are very boring.

I have not recieved a paycheck, but I have been assured that my checks have been sent to our bank.

Tell my son Grant, "I love him and miss him." And, Baby, Ask him to write me a letter.

I apoligize for the short letter this time. I'll try to make my next letter longer.

Don't forget our dreams, My Love.

I love you dearly,

Lon

DEFENDANT'S EXHIBIT 7

DEFENDENT'S EXHIBIT 7A

JUNE 29TH, 1983
TELEX NO. DB9/06/222

'83 JUNE 29 2:13

DERRICK BARGE 9	PROGRESS REPORT FOR JUNE 28TH, 1983
WEATHER	SLIGHT HAZE
WINDS	NW 18-20 KNOTS
SEAS	6-8 OCC. 9 FEET
VISIBILITY	7-9 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR - BH29 JACKET
WATER DEPTH	110 FEET
CUSTOMER	QATAR GENERAL PETROLEUM CORPORATION

JOB NUMBER	CONTRACT
69178-35900	BARGE SUPPORT DURING HOOK UP
0001-0900	ASSISTING HOOK UP CREW ON BHSC/BHJ2 PLATFORMS.
	M/W: 001-0015 RELOCATED WALKWAY TO THE PLATFORM TOWARDS THE CENTER OF DB9.

0500-0730 OFFLOADED MATERIALS AND SUPPLIES FROM M/V. "MAR-SEA8"

JOB NUMBER CONTRACT

69003-47600 WEATHER DOWNTIME
0900-2400 MOVED BARGE AWAY FROM BH29 DUE TO THE WEATHER. STANDING BY 500' AWAY FROM BH29 AND WAITING ON WEATHER TO SUB-SIDE.

WEATHER CONDITION:
0800-1000 WINDS NW 18-20 KNOTS SEAS 6-8 FEET
1000-1200 WINDS NW 18-20 GUST 24 KTS SEAS 6-8 FEET
1200-1500 WINDS NW 18-20 GUST 24 KTS SEAS 6-8 OCC 9 FEET
1500-1800 WINDS NW 18-20 KTS SEAS 7-9 FEET OCC 10 FEET
1800-2100 WINDS NW 18-20 KTS SEAS 6-7 FEET
2100-2400 WINDS NW 18-20 KTS SEAS 6-7 FEET

M/W: "GATE TIDE" (PAINT BOAT) STANDING BY WAITING ON WEATHER

ACCUMULATED TOTAL DAYS:

M/R. TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69012 CONT	2ND MOB/DEMOB OF DB09	1.32	—	—	—	—
69002 CONT	RIG UP DB09 & STINGER	1.37	—	1.28	—	—
69043 CONT	6" P/L PS2C TO MM32-L	5.00	0.50	0.93	—	0.88
69183 INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	—	—	—	—
69043 CONT	6" P/L PS2C TO MM32-S	3.00	—	0.39	0.06	—
69043 F/AC	EXTRA WORK MANOEUVER BARGE BETWEEN EXISTING M/BUOY - PS2C	0.05	—	—	—	—
69043 CONT	6" P/L PS2C TO MM33	1.49	—	—	0.03	—
69043 CONT	6" P/L PS2C TO MM31-L	2.25	—	0.04	0.01	—
69043 CONT	6" P/L PS2C TO MM31-S	2.03	—	0.07	—	—
69043 F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03	—	—	—
69043 F/AC	USE WEAKER SOURCE AS PER CUSTOMER	0.26	0.26	—	—	—
69168 CONT	HOOK UP MM31	1.03	—	—	—	—
69133 F/AC	RISER/CLAMP MM31	0.25	—	—	—	—
69133 CONT	RISER/CLAMP MM31-L	1.25	—	—	—	—
69133 CONT	RISER/CLAMP MM31-S	1.07	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
			1.34	—	—	—	—
69133	CONT	RISER/CLAMP MM33	0.14	0.14	—	—	—
69133	F/AC	WAITING ON CUSTOMER SUPPLIED BOLTS	0.63	—	—	—	—
68168	CONT	HOOK UP MM33	0.79	—	—	0.04	—
69133	CONT	RISER/CLAMP MM32-S	0.29	—	—	—	—
69133	F/AC	RISER/CLAMP MM32	0.73	—	—	—	—
69133	CONT	RISER/CLAMP MM32-L	0.81	—	—	—	—
69168	CONT	HOOK UP MM32	8.63	—	0.63	0.04	0.25
69063	CONT	6" P/L SHORE TO PS2	0.96	—	—	—	—
69012	CONT	INTER FIELD TOW TIME	1.05	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C - ISSB	0.81	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C - 1SSC	0.38	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.19	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.90	—	—	—	—
69123	CONT	RISER/CLAMP IS3	0.25	—	—	—	—
69073	F/AC	CUT/SALVAGE 6" P/L					

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		PS1C - IS3	0.08	—	—	—	—
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.62	—	—	—	—
69158	CONT	HOOK UP IS3	1.51	—	—	—	—
69033	CONT	MPTI ISSA 10"	1.83	—	—	—	—
69033	CONT	MPTI ISSA 6"	1.70	—	—	—	—
69178	CONT	HOOK UP PS3C	5.23	0.10	—	—	2.48
69053	CONT	10" P/L PS3C TO BHSC	0.31	—	0.31	—	—
69003	CONT	DOWNTIME EQUIPMENT	5.02	—	0.38	0.36	—
69053	CONT	12" P/L PS3C TO BHJ2	4.29	—	0.38	—	0.54
69053	CONT	10" P/L PS3C TO BHJ2	3.01	0.35	0.21	0.15	—
69053	CONT	6" P/L BHSC TO BH29	1.15	—	—	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	0.07	0.07	—	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	1.53	—	—	—	—
69033	CONT	MPTI 6" ISSA	0.37	—	—	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.86	—	—	—	—
69033	CONT	MPTI 6" IS16	0.36	—	—	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	—	—	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	1.96	—	0.24	0.13	—
69053	CONT	6" P/L BH25 TO BHSC	0.30	—	—	—	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE					

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		TO UNCHARTED SITE					
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	—	—	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	—	—	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05	—	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	—	—	—	—
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	0.94	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	1.00				0.62
		TOTAL	88.92	2.90	4.89	0.82	6.79

USEABLE FUEL AND WATER 24 HRS STATUS
JUNE 28, 1983

	FUEL	WATER
1. OPENING INVENTORY	93764	316748
2. PRODUCED BY BARGE	0	7198
3. CONSUMED BY BARGE	1122	17078
4. CLOSING INVENTORY	92642	306868

EQUIPMENT REPORT:

	CONT.	CONT.
	69178	69003
	35900	47600
DERRICK BARGE 9	9	15
JARAMAC 8	9	15
JARAMAC 61	9	15
GATE TIDE	9	15
INTERMAC 204	9	15
MESA STINGER	9	15

MARINE MOVEMENTS:

0500 HRS MARSEA-8 ARRIVED DB9
0740 HRS MARSEA-8 DEPT. TO DUBAI

SAFETY MEETING

20TH JUNE 1983 : FIRE AND SHIP ABADON DRILL.
18TH JUNE 1983 : SAFETY MEETING HELD.

ACCIDENT REPORT

DERRICK BARGE AND SPREAD : NONE

24 HRS FORECAST:

IF WEATHER PERMITS, INSTALL 6" RISER AND HOOK UP ON BH29 P/FORM.
GATE TIDE WILL RESUME PAINTING ON BHJ2.

COMPLETION DATE:

PRESENT PROGRESS AT 0600 HRS. JUNE 29, 1983

STANDING BY WAITING ON WEATHER.

LOCATION : BH FIELD, QATAR
WEATHER : FINE
WIND : NW 20-22 KNOTS
SEA : 7-9 OCC. 10 FT.
VISIB. : 8-10 MILES

0000-0600 STANDING BY WAITING ON WEATHER.

PERSONEL MOVEMENTS	ARRIVAL	DEPATURE
	J. WALLENDER	R. FRITZ
	P. ROBINSON	J. BUTTERS
	W. TABONY	R. DENT
		B. CAPLIAN
		T. LOGAN
		V. PILLAI

PERSONNEL LIST FOR JUNE 28, 1983

CLASSIFICATION	TOTAL
1. WESTERN SUPERVISION	
A: MCDERMOTT	
BARGE SUPERINTENDENT	1
FIELD ENGINEER	1
CHIEF ENGINEER	0
FIRST ENGINEERS	1
SECOND ENGINEER	1
BARGE FOREMAN	1
RELIEF BARGE FOREMAN	1
WELDER FOREMAN	1
LEADERMAN	1
DERRICK OPERATORS	2

ANCHOR FOREMAN	1
HOIST OPERATORS	4
BARGE ELECTRICIAN	1
LEAD DIVER	1
DIVERS	3
DIVING SUPERVISOR	1
RADIOGRAPHERS	2
PIPE FITTER FOREMAN	1
SAFETY ENGINEER	1
PAINTER FOREMAN	1
B: SUB-CONTRACTORS	
SURVEYORS (HYDROSPACE)	4
DIVERS (HYDROSPACE)	2
DIVERS (U.W.W.)	3
STRESS RELIEVER (COOPERHEAT)	1
TOTAL WESTERN SUPERVISION	36
2. NON-WESTERN SUPERVISION	
A: MCDERMOTT NONE	0
B: SUB-CONTRACTORS	
X-RAY TECHNICIANS (VETCO)	2
TOTAL NON-WESTERN SUPERVISION	2
3. BELOW DECK	
A: MCDERMOTT	
1. WESTERN	
CHIEF STEWARD	1
MEDIC	1
2. ASIANS, S.E. ASIANS & INDIGENOUS	
SENIOR CLERK	1
INTERMEDIATE CLERK	1
JUNIOR CLERK	1
MATERIAL CONTROLLER	1
MATERIAL CLERKS	2

MEDIC	1
SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	35
TOTAL BELOW DECK	63

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN	3
RIGGERS	29
RIGGERS (YARD)	7
TOTAL SUPPORTS	39

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMEN	2
PIPE FITTERS	16
PAINTERS	9
PIPING/MECHANICAL ENGINEER	1
TOTAL DIRECTS	54

5. CUSTOMER REPS.

Q.G.P.C. REPS.	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	203

JUNE 30TH 1983
TELEX NO. DB9/06/225

'83 JUN 30 2:02

DERRICK BARGE 9

PROGRESS REPORT FOR JUNE 29TH, 1983

WEATHER	FINE
WINDS	NW 25-30 KNOTS
SEAS	8-10 FEET
VISIBILITY	7-9 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR – BH29 JACKET
WATER DEPTH	110 FEET
CUSTOMER	QATAR GENERAL PETROLEUM CORPORATION

JOB NUMBER	CONTRACT
69003-47600	WEATHER DOWNTIME
0001-2400	STANDING BY WAITING ON WEATHER TO SUBSIDE AT BH29P/F.
	MEANWHILE:
	0001-0800 CHANGE OUT BOOM CABLE ON 3900 CRANE
	M/W: GENERAL BARGE MAINTENANCE.

WEATHER CONDITION:

0001-0300 WIND NW 18-20 KTS SEAS 7-9 FEET
0300-0600 WIND NW 20-25 KTS SEAS 7-9 OCC 10 FEET
0600-0900 WIND NW 20-25 KTS SEAS 8-10 FEET
0900-1200 WIND NW 20-25 GUST 30 SEAS 8-10 OCC 12 FEET
1200-1500 WIND NW 20-25 GUST 30 SEAS 9-11 OCC 14 FEET
1500-1800 WIND NW 25-30 GUST 35 SEAS 10-12 OCC 14 FEET
1800-2100 WIND NW 20-25 GUST 30 SEAS 9-11 OCC 13 FEET
2100-2400 WIND NW 20-25 SEAS 8-10 FEET

MEANWHILE: "GATE TIDE"
0001-2400 GATE TIDE STANDING BY AT MOORING IN BH FIELD, WAITING ON WEATHER TO SUBSIDE TO MOVE INTO BHJ2/BHSC PLATFORM TO COMPLETE PAINTING.

ACCUMULATED TOTAL DAYS:

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69012	CONT	2ND MOB/DEMOB OF DB09	1.32	—	—	—	—
69002	CONT	RIG UP DB09 & STINGER	1.37	—	1.28	—	—
69043	CONT	6" P/L PS2C TO MM32-L	5.00	0.50	0.93	—	0.88
69183	INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	—	—	—	—
69043	CONT	6" P/L PS2C TO MM32-S	3.00	—	0.39	0.06	—
69043	F/AC	EXTRA WORK MANOEUVER [sic] BARGE BETWEEN EXISTING M/BUOY – PS2C	0.05	—	—	—	—
69043	CONT	6" P/L PS2C TO MM33	1.49	—	—	0.03	—
69043	CONT	6" P/L PS2C TO MM31-L	2.25	—	0.04	0.01	—
69043	CONT	6" P/L PS2C TO MM31-S	2.03	—	0.07	—	—
69043	F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03	—	—	—
69043	F/AC	USE WEAKER SOURCE AS PER CUSTOMER	0.26	0.26	—	—	—
69168	CONT	HOOK UP MM31	1.03	—	—	—	—
69133	F/AC	RISER/CLAMP MM31	0.25	—	—	—	—
69133	CONT	RISER/CLAMP MM31-L	1.25	—	—	—	—
69133	CONT	RISER/CLAMP MM31-S	1.07	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69133	CONT	RISER/CLAMP MM33	1.34	—	—	—	—
69133	F/AC	WAITING ON CUSTOMER SUPPLIED BOLTS	0.14	0.14	—	—	—
68168	CONT	HOOK UP MM33	0.63	—	—	—	—
69133	CONT	RISER/CLAMP MM32-S	0.79	—	—	0.04	—
69133	F/AC	RISER/CLAMP MM32	0.29	—	—	—	—
69133	CONT	RISER/CLAMP MM32-L	0.73	—	—	—	—
69168	CONT	HOOK UP MM32	0.81	—	—	—	—
69063	CONT	6" P/L SHORE TO PS2	8.63	—	0.63	0.04	0.25
69012	CONT	INTER FIELD TOW TIME	0.96	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – ISSB	1.05	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – 1SSC	0.81	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.38	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.19	—	—	—	—
69123	CONT	RISER/CLAMP IS3	0.90	—	—	—	—
69073	F/AC	CUT/SALVAGE 6" P/L	0.25	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		PS1C – IS3					
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.08	—	—	—	—
69158	CONT	HOOK UP IS3	0.62	—	—	—	—
69033	CONT	MPTI ISSA 10"	1.51	—	—	—	—
69033	CONT	MPTI ISSA 6"	1.83	—	—	—	—
69178	CONT	HOOK UP PS3C	1.70	—	—	—	—
69053	CONT	10" P/L PS3C TO BHSC	5.23	0.10	—	—	2.48
69003	CONT	DOWNTIME EQUIPMENT	0.31	—	0.31	—	—
69053	CONT	12" P/L PS3C TO BHJ2	5.02	—	0.38	0.36	—
69053	CONT	10" P/L PS3C TO BHJ2	4.29	—	0.38	—	0.54
69053	CONT	6" P/L BHSC TO BH29	3.01	0.35	0.21	0.15	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	1.15	—	—	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	0.07	0.07	—	—	—
69033	CONT	MPTI 6" ISSA	1.53	—	—	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.37	—	—	—	—
69033	CONT	MPTI 6" IS16	0.86	—	—	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	—	—	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	0.36	—	—	—	—
69053	CONT	6" P/L BH25 TO BHSC	1.96	—	0.24	0.13	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE	0.30	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		TO UNCHARTED SITE					
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	—	—	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	—	—	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05	—	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	—	—	—	—
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	0.94	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	1.00				0.62
		TOTAL	88.92	2.90	4.89	0.82	6.79

USEABLE FUEL AND WATER 24 HRS STATUS
JUNE 29TH, 1983

	FUEL	WATER
1. OPENING INVENTORY	92642	306865
2. PRODUCED	0	0
3. RECEIVED FROM JAR-61	9084	0
4. BARGE CONSUMED	1240	18690
5. CLOSING INVENTORY	100486	288175

EQUIPMENT REPORT:	CONTRACT 69003-47600
DERRICK BARGE 9	24
JARAMAC 8	24
JARAMAC 61	24
JARAMAC 44	5.50
INTERMAC 204	24
ME5A STINGER	24
GATE TIDE	24

NOTE: 1830 HRS PICKED UP TIME OF JARAMAC 44

EQUIPMENT MOVEMENTS:
2200 HRS JAR-44 ARRIVED DB9

SAFETY MEETING
20TH JUNE 1983 : FIRE AND SHIP ABADON [SIC] DRILL:
18TH JUNE 1983 : SAFETY MEETING HELD

ACCIDENT REPORT
DERRICK BARGE AND SPREAD : NONE

24 HRS FORECAST:
IF WEATHER PERMITS, INSTALL 6" RISER AND HOOK UP ON BH29 P/FORM.
GATE TIDE WILL RESUME PAINTING ON BHJ2.

COMPLETION DATE:

WILL ADVISE LATER

PRESENT PROGRESS AND WEATHER – 0600 HRS.
JUNE 30, 1983

STANDING BY WAITING ON WEATHER

LOCATION : BH FIELD, QATAR.
WEATHER : FINE
WINDS : NW 25-30 KNOTS
SEAS : 10-12 OCC. 14 FT.
VISIBILITY : 8-10 MILES

0000-0600 STANDING BY WAITING ON WEATHER.

PERSONNEL MOVEMENT: ARRIVAL/DEPARTURE – NONE

PERSONNEL LIST FOR JUNE 29, 1983

CLASSIFICATION		TOTAL
1. WESTERN SUPERVISION		
A: MCDERMOTT		
BARGE SUPERINTENDENT		1
FIELD ENGINEER		1
CHIEF ENGINEER		0
FIRST ENGINEERS		1
SECOND ENGINEER		1
BARGE FOREMAN		1
RELIEF BARGE FOREMAN		1
WELDER FOREMAN		1
LEADERMAN		1
DERRICK OPERATORS		2
ANCHOR FOREMAN		1
HOIST OPERATORS		4

BARGE ELECTRICIAN		1
LEAD DIVER		1
DIVERS		3
DIVING SUPERVISOR		1
RADIOGRAPHERS		2
PIPE FITTER FOREMAN		1
SAFETY ENGINEER		1
PAINTER FOREMAN		1
B: SUB-CONTRACTORS		
SURVEYORS	(HYDROSPACE)	4
DIVERS	(HYDROSPACE)	2
DIVERS	(U.W.W.)	3
STRESS RELIEVER	(COOPERHEAT)	1
TOTAL WESTERN SUPERVISION		36
2. NON-WESTERN SUPERVISION		
A: MCDERMOTT		
NONE		0
B: SUB-CONTRACTORS		
X-RAY TECHNICIANS	(VETCO)	2
TOTAL NON-WESTERN SUPERVISION		2
3. BELOW DECK		
A: MCDERMOTT		
1. WESTERN		
CHIEF STEWARD		1
MEDIC		1
2. ASIANS, S.E. ASIANS & INDIGENOUS		
SENIOR CLERK		1
INTERMEDIATE CLERK		1
JUNIOR CLERK		1

MATERIAL CONTROLLER	1
MATERIAL CLERKS	2
MEDIC	1
SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	35
TOTAL BELOW DECK	63

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN	3
RIGGERS	29
RIGGERS (YARD)	7
TOTAL SUPPORTS	39

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMAN	2
PIPE FITTERS	16
PAINTERS	9
PIPING/MECHANICAL ENGINEER	1
TOTAL DIRECTS	54

5. CUSTOMER REPS.

Q.G.P.C. REPS	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	203

PLAINTIFF'S EXHIBIT 1

JULY 01ST, 1983
TELEX NO. DB9/07/001

'83 JUL 1 3:13

DERRICK BARGE 9

PROGRESS REPORT
FOR JUNE 30TH, 1983

WEATHER	FINE
WINDS	NW 25-30 KNOTS
SEAS	8-10 OCC 12 FEET
VISIBILITY	7-9 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR - BH29 JACKET
WATER DEPTH	110 FEET
CUSTOMER	QATAR GENERAL PETROLEUM CORPORATION

JOB NUMBER 69003-47600
0001-2400

CONTRACT
WEATHER DOWNTIME
STANDING BY WAITING ON WEATHER TO SUBSIDE AT BH29 P/FORM.
NOTE:
AT 0615 SEAS INCREASING, HAD TO CUT OFF NO. 4 ANCHOR CABLE FROM DRUM.
WEATHER CONDITION.
0001-0300 WINDS NW 25-30 KTS SEAS 10-12 OCC 14 FEET
0300-0600 WINDS NW 30-35 GUST 40 SEAS 12-14 OCC 15 FEET
0600-0900 WINDS NW 20-25 KTS SEAS 12-14 FEET
0900-1200 WINDS NW 20-25 KTS SEAS 10-12 OCC 14
1200-1500 WINDS NW 20-25 KTS SEAS 9-11 OCC 12 FEET
1500-1800 WINDS NW 18-24 KTS SEAS 8-10 OCC 11 FEET
1800-2100 WINDS NW 20-25 KTS SEAS 8-10 FEET
2100-240 WINDS N'LY 16-22 KTS SEAS 7-9 FEET

M/V. "GATE TIDE" (HOOK PAINT BOAT)
0001-2400 STANDING BY WAITING ON WEATHER TO MOVE INTO BHSC/BHJ2 PLATFORMS.
NOTE:
AT 1100 HRS WEATHER TOO ROUGH, GATE TIDE DEPT. TO DAS ISLAND.
AT 1410 HRS ARRIVED 1 MILE SOUTH OF DAS ISLAND AND DROPPED ANCHOR AND STANDING BY WAITING ON WEATHER.

ACCUMULATED TOTAL DAYS:

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69012	CONT	2ND MOB/DEMOB OF DB09	1.32	—	—	—	—
69002	CONT	RIG UP DB09 & STINGER	1.37	—	1.28	—	—
69043	CONT	6" P/L PS2C TO MM32-L	5.00	0.50	0.93	—	0.88
69183	INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	—	—	—	—
69043	CONT	6" P/L PS2C TO MM32-S	3.00	—	0.39	0.06	—
69043	F/AC	EXTRA WORK MANOEUVER [sic] BARGE BETWEEN EXISTING M/BUOY – PS2C	0.05	—	—	—	—
69043	CONT	6" P/L PS2C TO MM33	1.49	—	—	0.03	—
69043	CONT	6" P/L PS2C TO MM31-L	2.25	—	0.04	0.01	—
69043	CONT	6" P/L PS2C TO MM31-S	2.03	—	0.07	—	—
69043	F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03	—	—	—
69043	F/AC	USE WEAKER SOURCE AS PER CUSTOMFR	0.26	0.26	—	—	—
69168	CONT	HOOK UP MM31	1.03	—	—	—	—
69133	F/AC	RISER/CLAMP MM31	0.25	—	—	—	—
69133	CONT	RISER/CLAMP MM31-L	1.25	—	—	—	—
69133	CONT	RISER/CLAMP MM31-S	1.07	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69133	CONT	RISER/CLAMP MM33	1.34	—	—	—	—
69133	F/AC	WAITING ON CUSTOMER SUPPLIED BOLTS	0.14	0.14	—	—	—
68168	CONT	HOOK UP MM33	0.63	—	—	—	—
69133	CONT	RISER/CLAMP MM32-S	0.79	—	—	0.04	—
69133	F/AC	RISER/CLAMP MM32	0.29	—	—	—	—
69133	CONT	RISER/CLAMP MM32-L	0.73	—	—	—	—
69168	CONT	HOOK UP MM32	0.81	—	—	—	—
69063	CONT	6" P/L SHORE TO PS2	8.63	—	0.63	0.04	0.25
69012	CONT	INTER FIELD TOW TIME	0.96	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – ISSB	1.05	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – 1SSC	0.81	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.38	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.19	—	—	—	—
69123	CONT	RISER/CLAMP IS3	0.90	—	—	—	—
69073	F/AC	CUT/SALVAGE 6" P/L	0.25	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		PS1C – IS3					
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.08	—	—	—	—
69158	CONT	HOOK UP IS3	0.62	—	—	—	—
69033	CONT	MPTI ISSA 10"	1.51	—	—	—	—
69033	CONT	MPTI ISSA 6"	1.83	—	—	—	—
69178	CONT	HOOK UP PS3C	1.70	—	—	—	—
69053	CONT	10" P/L PS3C TO BHSC	5.23	0.10	—	—	2.48
69003	CONT	DOWNTIME EQUIPMENT	0.31	—	0.31	—	—
69053	CONT	12" P/L PS3C TO BHJ2	5.02	—	0.38	0.36	—
69053	CONT	10" P/L PS3C TO BHJ2	4.29	—	0.38	—	0.54
69053	CONT	6" P/L BHSC TO BH29	3.01	0.35	0.21	0.15	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	1.15	—	—	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	0.07	0.07	—	—	—
69033	CONT	MPTI 6" ISSA	1.53	—	—	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.37	—	—	—	—
69033	CONT	MPTI 6" IS16	0.86	—	—	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	—	—	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	0.36	—	—	—	—
69053	CONT	6" P/L BH25 TO BHSC	1.96	—	0.24	0.13	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE	0.30	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		TO UNCHARTED SITE					
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	—	—	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	—	—	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05	—	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	—	—	—	—
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	0.94	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	3.00	–	–	–	2.62
		TOTAL	90.92	2.90	4.89	0.82	8.79

USEABLE FUEL AND WATER 24 HRS STATUS
JUNE 30TH, 1983

	FUEL	WATER
1. OPENING INVENTORY	100486	288175
2. PRODUCED	0	9057
3. RECEIVED FROM JAR-61	10916	0
4. BARGE CONSUMED	1182	15520
5. CLOSING INVENTORY	110220	281712

EQUIPMENT REPORT:	CONTRACT 69003-47600	CONTRACT 69012-47201
DERRICK BARGE 9	24	
JARAMAC 8	24	
JARAMAC 44	24	
JARAMAC 61 ME5A	0.50	17.50
STINGER	24	
INTERMAC 204	24	
GATE TIDE	24	

NOTE: AT 1800 HRS DROPPED TIME OF JAR-61, ARRIVED MARINE DOCK DUBAI.

MARINE MOVEMENTS:

0030 JARAMAC 61 DEPT. TO DUBAI FROM DB9.

SAFETY MEETING

20TH JUNE 1983 : FIRE AND SHIP ABADON [SIC] DRILL:

18TH JUNE 1983 : SAFETY MEETING HELD

ACCIDENT REPORT

DERRICK BARGE 9 & SPREAD : NONE

24 HRS FORECAST:

IF WEATHER PERMITS, INSTALL 6" RISER AND HOOK UP ON BH29 P/FORM.
GATE TIDE WILL RESUME PAINTING ON BHJ2.

COMPLETION DATE:

PRESENT PROGRESS AT 0600 HRS.
JULY 1, 1983

MOVED BARGE BACK ALONGSIDE 'BH-29' PLATFORM, PREPARING TO PLACE GANGWAY.

LOCATION	BH FIELD QATAR BH29 LOCATION
WEATHER	FINE
WINDS	NW 18-20 KNOTS
SEAS	4-6 FEET SWELLS
VISIBILITY	8-10 MILES

0001-0200	ASSISTING HOOK UP CREW ON BH29 JACKET.
0200-0415	MOVED BARGE TO PORT INORDER [SIC] TO RECOVER NO. 4 ANCHOR CABLE.
0415-0600	MOVING BARGE ALONGSIDE BH29 PLATFORM AND SET WALKWAY INBETWEEN BARGE AND JACKET.

GATE TIDE:

0001-0600 WAITING ON WEATHER 1 MILE SOUTH OF DAS ISLAND.

PERSONNEL MOVEMENTS:

ARRIVAL	DEPARTURE
NONE	A. LEWIS

PERSONNEL LIST FOR JUNE 30, 1983

CLASSIFICATION		TOTAL
1. WESTERN SUPERVISION		
A: MCDERMOTT		
BARGE SUPERINTENDENT		1
FIELD ENGINEER		1

CHIEF ENGINEER		0
FIRST ENGINEERS		1
SECOND ENGINEER		1
BARGE FOREMAN		1
RELIEF BARGE FOREMAN		1
WELDER FOREMAN		1
LEADERMAN		1
DERRICK OPERATORS		2
ANCHOR FOREMAN		1
HOIST OPERATORS		3
BARGE ELECTRICIAN		1
LEAD DIVER		1
DIVERS		3
DIVING SUPERVISOR		1
RADIOGRAPHERS		2
PIPE FITTER FOREMAN		1
SAFETY ENGINEER		1
PAINTER FOREMAN		1
B: SUB-CONTRACTORS		
SURVEYORS	(HYDROSPACE)	4
DIVERS	(HYDROSPACE)	2
DIVERS	(U.W.W.)	3
STRESS RELIEVER	(COOPERHEAT)	1
TOTAL WESTERN SUPERVISION		35
2. NON-WESTERN SUPERVISION		
A: MCDERMOTT		
NONE		0
B: SUB-CONTRACTORS		
X-RAY TECHNICIANS	(VETCO)	2
TOTAL NON-WESTERN SUPERVISION		2
3. BELOW DECK		
A: MCDERMOTT		
1. WESTERN		
CHIEF STEWARD		1
MEDIC		1

2. ASIANS, S.E. ASIANS & INDIGENOUS

SENIOR CLERK	1
INTERMEDIATE CLERK	1
JUNIOR CLERK	1
MATERIAL CONTROLLER	1
MATERIAL CLERKS	2
MEDIC	1
SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	35
TOTAL BELOW DECK	63

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN	3
RIGGERS	29
RIGGERS (YARD)	7
TOTAL SUPPORTS	39

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMAN	2

PIPE FITTERS	16
PAINTERS	9
PIPING/MECHANICAL ENGINEER	1
TOTAL DIRECTS	54

5. CUSTOMER REPS.

Q.G.P.C. REPS	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	202

PLAINTIFF'S EXHIBIT 1

JULY 02ND, 1983
TELEX NO. DB9/07/012

'83 JUL 2 4:54

PROGRESS REPORT
FOR JULY 01ST, 1983

DERRICK BARGE 9

WEATHER	FINE
WINDS	NW 15-18 KNOTS
SEAS	3-5 FEET SWELLS
VISIBILITY	8-10 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR - BH29 JACKET
WATER DEPTH	110 FEET
CUSTOMER	QATAR GENERAL PETROLEUM CORPORATION

JOB NUMBER	CONTRACT
69003-47600	WEATHLR DOWNTIME
0001-0600	STANDING BY WAITING ON WEATHER TO SUBSIDE AT BH29 P/FORM.
	NOTE:
	0200-0415 MOVED BARGE TO PORT INORDER [SIC] TO RECOVER NO.4 ANCHOR CABLE FROM SEABED.
	0415-0600 MOVING BARGE ALONGSIDE BH29 PLATFORM, ALSO SET WALKWAY INBETWEEN BARGE AND BH29 PLATFORM.
JOB NUMBER	CONTRACT
69178-35900	BARGE SUPPORT ON WHJ.
0600-1730	ASSISTING HOOK UP CREW ON BH29 PLATFORM.
	M/W: 1010-1100 X-RAYING ALL WELD SPOOLS ON BH29 PLATFORM.
	NOTE: UNABLE TO INSTALL RISER DUE TO WEATHER CONDITION. WINDS NW 15-18 KNOTS SEAS 5-7 OCC 8 FEET.
JOB NUMBER	CONTRACT
69143-40400	RISER AND CLAMPS AT WELL HEAD JACKET.
1730-1800	RIGGING UP AND MOVING BARGE INTO POSITION FOR INSTALLATION OF 6" DIA. RISER AT BH29 PLATFORM.
1800-1900	RIGED [SIC] UP DAVITS AND DIVERS DOWN ATTACHED DERRICK AND CR. CRANE SLINGS AND TWO DAVITS

	LINE ONTO 6" PIPELINE AND RISER. PICKED UP SAME AND MOVED LINE AND SET RISER INTO CLAMPS. (6" LINE BH29 – BHSC)
1900-2000	DIVERS DOWN RELEASED DERRICK AND CR. CRANE SLINGS AND DAVITS.
	DIVER REPORTED 6" RISER SETTING ON BOTTOM IN GOOD CONDITION.
	ALSO SWAM TWO JOINTS BACK REPORTED TUBE BEND SET TO BOTTOM IN GOOD CONDITION.
2000-2055	DIVER IN CHAMBER DECOMPRESSING.
	ALSO RIGGER WITH CHAIN FALL AND AIR TUGGER PULLING RISER INTO MIDDLE AND TOP CLAMP.
2055-2145	DIVER RELEASED SLING FROM BELOW MONEL JOINT, PULLED TOP OF RISER OUT WITH AIR TUGGER AND PULLED RISER INTO MIDDLE AND TOP CLAMP. ALSOITIGHTENED [SIC] BOTH SUB SEA CLAMPS AND +10' ELEVATION CLAMP – COMPLETE.
	WEATHER CONDITION:
	WINDS NW 12-15 KNOTS SEAS 3-4 FEET
JOB NUMBER	CONTRACT
69178-41200	PURGE, PIG AND TEST
2145-2320	RIGGING UP TO PUSH WITH PINGER FROM BH29 TO BHSC P/F.
	INSTALLED 6" DIA. PIG AND HOOKED HOSES TO PUSH PIG.
2320-2400	COMMENCED PUSHING PIG FROM BH29 IN 6" DIA PIPELINE TO BHSC PLATFORM.

MEANWHILE: HOOK UP

1730-2400 ASSISTING HOOK UP CREW IN DOING HOOK UP ON BH29 PLATFORM.

MEANWHILE: "GATE TIDE" (PAINT BOAT)

0001-1630 STANDING BY WAITING ON WEATHER.
AT 0810 HRS "GATE TIDE" DEPT. FROM DAS ISLAND TO DB9.
AT 1030 HRS "GATE TIDE" ARRIVED DB9 AND WAITING ON WEATHER.
1630-1900 "GATE TIDE" DEPT. TO INT.204 TO TAKE PAINT INVENTORY.
1900-2400 STANDING BY AT MOORING ANCHOR.

ACCUMULATED TOTAL DAYS:

M/R. TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69012 CONT	2ND MOB/DEMOB OF DB09	1.32	—	—	—	—
69002 CONT	RIG UP DB09 & STINGER	1.37	—	1.28	—	—
69043 CONT	6" P/L PS2C TO MM32-L	5.00	0.50	0.93	—	0.88
69183 INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	—	—	—	—
69043 CONT	6" P/L PS2C TO MM32-S	3.00	—	0.39	0.06	—
69043 F/AC	EXTRA WORK MANOEUVER BARGE BETWEEN EXISTING M/BUOY – PS2C	0.05	—	—	—	—
69043 CONT	6" P/L PS2C TO MM33	1.49	—	—	0.03	—
69043 CONT	6" P/L PS2C TO MM31-L	2.25	—	0.04	0.01	—
69043 CONT	6" P/L PS2C TO MM31-S	2.03	—	0.07	—	—
69043 F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03	—	—	—
69043 F/AC	USE WEAKER SOURCE AS PER CUSTOMER	0.26	0.26	—	—	—
69168 CONT	HOOK UP MM31	1.03	—	—	—	—
69133 F/AC	RISER/CLAMP MM31	0.25	—	—	—	—
69133 CONT	RISER/CLAMP MM31-L	1.25	—	—	—	—
69133 CONT	RISER/CLAMP MM31-S	1.07	—	—	—	—
69133 CONT	RISER/CLAMP MM33	1.34	—	—	—	—
69133 F/AC	WAITING ON CUSTOMER	0.14	0.14	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
		SUPPLIED BOLTS	0.63	— —	—	—
68168	CONT	HOOK UP MM33	0.79	— —	0.04	—
69133	CONT	RISER/CLAMP MM32-S	0.29	— —	—	—
69133	F/AC	RISER/CLAMP MM32	0.73	— —	—	—
69133	CONT	RISER/CLAMP MM32-L	0.81	— —	—	—
69168	CONT	HOOK UP MM32	8.63	— 0.63	0.04	0.25
69063	CONT	6" P/L SHORE TO PS2	0.96	— —	—	—
69012	CONT	INTER FIELD TOW TIME	1.05	— —	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C - ISSB	0.81	— —	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C - 1SSC	0.38	— —	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.19	— —	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.90	— —	—	—
69123	CONT	RISER/CLAMP IS3	0.25	— —	—	—
69073	F/AC	CUT/SALVAGE 6" P/L PS1C - IS3	0.08	— —	—	—
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.62	— —	—	—
69158	CONT	HOOK UP IS3	1.51	— —	—	—
69033	CONT	MPTI ISSA 10"				

106

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
69033	CONT	MPTI ISSA 6"	1.83	— —	—	—
69178	CONT	HOOK UP PS3C	1.70	— —	—	—
69053	CONT	10" P/L PS3C TO BHSC	5.23	0.10 —	—	2.48
69003	CONT	DOWNTIME EQUIPMENT	0.31	— 0.31	—	—
69053	CONT	12" P/L PS3C TO BHJ2	5.02	— 0.38	0.36	—
69053	CONT	10" P/L PS3C TO BHJ2	4.29	— 0.38	—	0.54
69053	CONT	6" P/L BHSC TO BH29	3.01	0.35 0.21	0.15	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	1.15	— —	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	0.07	0.07 —	—	—
69033	CONT	MPTI 6" ISSA	1.53	— —	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.37	— —	—	—
69033	CONT	MPTI 6" IS16	0.86	— —	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	— —	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	0.36	— —	—	—
69053	CONT	6" P/L BH25 TO BHSC	1.96	— 0.24	0.13	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE TO UNCHARTED SITE	0.30	— —	—	—
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	— —	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	— —	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05 —	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	— —	—	—

107

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	1.12	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	3.73	–	–	–	2.87
69143	CONT	8" PIG BH29/BHSC	2.00	–	–	–	–
		TOTAL	91.92	2.90	4.89	0.82	9.04

USEABLE FUEL AND WATER 24 HRS STATUS
JULY 01ST, 1983

	FUEL	WATER
1. OPENING INVENTORY	110220	281712
2. PRODUCED	0	9816
3 BARGE CONSUMED	1496	12097
4. CLOSING INVENTORY	108724	279431

EQUIP-MENT	CONT.	CONT.	CONT.	CONT.	CONT.
REPORT:	69003	69178	69143	69143	69178
	47600	35900	40400	41200	48000
DERRICK BARGE 9	6	11.50	4.25	2.25	
JARAMAC 44	6	11.50	4.25	2.25	
JARAMAC 8	6	11.50	4.25	2.25	
INTERMAC 204	6	11.50	4.25	2.25	
ME5A STINGER	6	11.50	4.25	2.25	
GATE TIDE	16.50	2.50			5.00

MARINE MOVEMENTS:

2200 HRS MARSEA 17 ARRIVED DB9 FROM DB17
2200 HRS MARSEA 17 DEPT. TO DB27. ETA JULY 2 AT 0730 HRS.

SAFETY MEETING

20TH JUNE 1983 : FIRE AND SHIP ABADON [SIC] DRILL.

18TH JUNE 1983 : SAFETY MEETING HELD.

ACCIDENT REPORT

DERRICK BARGE 9/SPREAD – NONE

24 HRS FORECAST:

RUNNING 6" DIA. PIG FROM BH29 TO BHSC PLATFORM. ASSIST HOOK UP BH29 GATE TIDE TO COMMENCE PAINTING ON BHSC/BHJ2 PLATFORM.

COMPLETION DATE:

PLAINTIFF'S EXHIBIT 2

PRESENT PROGRESS AT 0600 HRS.
JULY 2, 1983

ASSISTING HOOK UP CREW ON BH29 PLATFORM M/W: DIVER DOWN PUT MONEL SPOOL IN -10' ELEV. CLAMP AND TIGHTENING UP SAME.

LOCATION	BH FIELD QATAR – BH29 LOCATION.
WEATHER	FINE
WINDS	NW 10-12 KNOTS
SEAS	2-4 FEET SWELLS
VISIBILITY	8-10 MILES

0001-0055	PUMPING PIG IN 6" LINE FROM BH29 TO BHSC LOCATION.
0055-0108	STOPPED PUMPING, HOSE BROKE REPLACE SAME
0108-0200	RESUME PUMPING PIG IN 6" LINE.
0200-0235	STOPPED PUMPING, PIG GOT STUCK IN MONEL AT BH29 JACKET.
0235-0245	RIGGED UP DIVERS TO UNBOLT MONEL INORDER [SIC] TO REMOVE 6" PIG FROM MONEL.
0245-0340	DIVERS DOWN TO UNBOLT MONEL FROM RISER, OPENED -10' ELEV. CLAMP.
0340-0350	PICKED UP MONEL SPOOL AND PLACED ON DECK TO REMOVE PIG.
0350-0415	REMOVING PIG FROM MONEL SPOOL ON DB DECK.
0415-0515	PICKED UP MONEL SPOOL AND LOWERED SAME TO INSTALL IN CLAMPS

0515-0600	DIVERS DOWN PUT MONEL SPOOL IN -10' ELEV. CLAMP AND TIGHTENING UP SAME. M/W: 0001-0600 ASSISTING HOOK UP CREW ON BH29 PLATFORM.

GATE TIDE (PAINT BOAT)

0001-0600 STANDING BY AT MOORING SYSTEM
0600 GATE TIDE DEPT. TO INT-204 TO RESUMED PAINT INVENTORY.

PERSONNEL MOVEMENTS	ARRIVAL	DEPARTURE
	(13 RIGGERS FILIPINOS)	(14 RIGGERS MALAYSIANS) J. AGUIRRE C. MATHEWS MARSHALL D-SOUZA

PERSONNEL LIST FOR JULY 21, 1983

CLASSIFICATION	TOTAL
1. WESTERN SUPERVISION	
A: MCDERMOTT	
BARGE SUPERINTENDENT	1
FIELD ENGINEER	1
CHIEF ENGINEER	0
FIRST ENGINEERS	1
SECOND ENGINEER	1
BARGE FOREMAN	1
RELIEF BARGE FOREMAN	1
WELDER FOREMAN	1
LEADERMAN	1
DERRICK OPERATORS	2
ANCHOR FOREMAN	0
HOIST OPERATORS	3

BARGE ELECTRICIAN		1
LEAD DIVER		1
DIVERS		3
DIVING SUPERVISOR		1
RADIOGRAPHERS		2
PIPE FITTER FOREMAN		1
SAFETY ENGINEER		1
PAINTER FOREMAN		1

B: SUB-CONTRACTORS

SURVEYORS	(HYDROSPACE)	4
DIVERS	(HYDROSPACE)	2
DIVERS	(U.W.W.)	3
STRESS RELIEVER	(COOPERHEAT)	1

TOTAL WESTERN SUPERVISION 34

2. NON-WESTERN SUPERVISION

A: MCDERMOTT

NONE 0

B: SUB-CONTRACTORS

X-RAY TECHNICIANS	(VETCO)	2

TOTAL NON-WESTERN SUPERVISION 2

3. BELOW DECK

A: MCDERMOTT

1. WESTERN

CHIEF STEWARD	1
MEDIC	1

2. ASIANS, S.E. ASIANS & INDIGENOUS

SENIOR CLERK	1
INTERMEDIATE CLERK	1
JUNIOR CLERK	1

MATERIAL CONTROLLER	1
MATERIAL CLERKS	2
MEDIC	1
SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	34

TOTAL BELOW DECK 62

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN		3
RIGGERS		27
RIGGERS	(YARD)	7

TOTAL SUPPORTS 37

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMAN	2
PIPE FITTERS	16
PAINTERS	9
PIPING/MECHANICAL ENGINEER	1

TOTAL DIRECTS 54

5. CUSTOMER REPS.

Q.G.P.C. REPS	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	198

JULY 3, 1983 TELEX NO. DB9/7/020
DERRICK BARGE 9 PROGRESS REPORT
FOR JULY 02ND, 1983

'83 JUL 3 4:17

WEATHER	FINE
WINDS	NW 10-14 KNOTS
SEAS	2-3 FEET
VISIBILITY	8-10 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR – PS3C PLATFORM
WATER DEPTH	110 FEET

JOB NUMBER	CONTRACT
69178-41200	PIG & TEST 6" P/LINE BH29-BHSC
0001-0055	PUSHING PIG THROUGH 6" PIPELINE FROM BH29 TO BHSC P/FORM
0055-0108	STOPPED PUMPING PIG THROUGH THE LINE DUE TO A BROKEN HOSE

0108-0200	REPAIRED HOSE AND RESUMED PUMPING PIG THROUGH THE 6" PIPELINE.
0200-0235	STOPPED PUSHING PIG THROUGH THE 6" PIPELINE AS THE PIG GOT STUCK IN THE MONEL SECTION OF THE 6" RISER AT BH29.
0235-0245	RIGGED UP DIVERS TO UNBOLT MONEL SECTION FROM THE RISER AND REMOVE PIG FROM THE RISER.
0245-0340	DIVERS REMOVED BOLTS FROM THE MONEL SECTION OF THE RISER. ALSO OPENED -10' ELEVATION RISER CLAMP.
0340-0350	PICKED UP MONEL SECTION OF THE RISER AND PLACED SAME ON DB DECK.
0350-0415	REMOVED PIG FROM THE MONEL SECTION ON DB DECK.
0415-0515	PICKED UP MONEL SECTION AND LOWERED SAME TO INSTALL IN CLAMPS.
0515-0600	DIVERS DOWN, INSTALL MONEL SPOOL IN -10' ELEVATION CLAMP AND TIGHTEN UP SAME.
0600-0630	INSTALL BLOWING HEAD AND HOOKED UP STEAM HOSE TO PUSH PIG THROUGH 6" PIPELINE.
0630-0500	PUSH PIG THROUGH 6" PIPELINE FROM BH29 TO BHSC.
0900-0940	AS PIG HAD NOT ARRIVED AT BHSC STOPPED PUMPING AND CHECK PINGER DETECTER [SIC] FOR PIG. FOUND PIG IN THE OFFSET TUBE TURN.

0940-1000	REMOVED BLOWING HEAD FROM 6" LINE.
1000-1145	INSTALL BALL PIG IN THE 6" LINE AND PREPARE TO PUSH SAME TO BHSC.
1145-1300	FABRICATED NEW FLANGE, TO USE AS PIG LAUNCHER.
1300-1305	INSTALLED FLANGE ON THE 6" LINE.
1305-1405	PUSHED BALL PIG THROUGH 6" LINE.
	NOTE: PIG ARRIVED AT BHSC AT 1405 HRS.
1405-1500	DERIGGED EQUIPMENT AND MATERIAL FROM BH29 PLATFORM.

PLAINTIFF'S EXHIBIT 4

JOB NUMBER	CONTRACT
69178-3400	JOBSITE DEMOB.
1500-1815	MOVED BARGE AWAY FROM BH29 PLATFORM AND PICKED UP ANCHORS
JOB NUMBER	INSURANCE
69183-00057	REPAIR 10" RISER AT PS3C ON BHSC PIPELINE.
1815-1930	TOWED BARGE TO PS3C LOCATION.
1930-2200	ARRIVED AT PS3 LOCATION. RAN OUT ANCHORS AND SET UP BARGE ON LOCATION.
2200-2205	DIVERS RIGGED UP TO PLACE BUOY ON PIPELINE. INORDER [SIC] TO GET A CORRECT LINE UP ON THE PIPELINE.

2205-2240	DIVER ATTACHED DOWN LINE TO THE DAMAGED SECTION OF THE RISER AND ATTACHED BUOY ON THE PIPELINE. (NEAR THE BUOY OF THE BARGE)
2240-2320	X-RAY WELD ON PUP JOINT WELDED TO THE 10" RISER ON DB DECK.
	WELD FOUND TO BE OKAY, WRAPPED WELD.
	M/W: REPAIR SWING ENGINE ON THE DERRICK CRANE. ALSO BROUGHT INT-204 ALONGSIDE DB9.
2320-2400	MOUNTING NO.5 DAVIT AND AIR TUGGER ON PORT SIDE OF BARGE TO PICK 10" PIPELINE.

MEANWHILE: HOOK UP CREW

0001-2400 ASSISTING HOOK UP CREW ON BH29 AND PS3C P/FORM.

MEANWHILE: "GATE TIDE" (PAINT BOAT)

0001-0600 STANDING BY AT MOORING ANCHOR.
0600-0800 DEPT. TO INT-204 TO CARRY ON PAINT INVENTORY.
0800-2000 DEPT. TO BHSC/BHJ2 TO RESUME PAINTING ACTIVITIES
2000-2400 DEPT. TO ANCHOR AND STANDING BY.

ACCUMULATED TOTAL DAYS:

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69012	CONT	2ND MOB/DEMOB OF DB09	1.32	—	—	—	—
69002	CONT	RIG UP DB09 & STINGER	1.37	—	1.28	—	—
69043	CONT	6" P/L PS2C TO MM32-L	5.00	0.50	0.93	—	0.88
69183	INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	—	—	—	—
69043	CONT	6" P/L PS2C TO MM32-S	3.00	—	0.39	0.06	—
69043	F/AC	EXTRA WORK MANOEUVER BARGE BETWEEN EXISTING M/BUOY – PS2C	0.05	—	—	—	—
69043	CONT	6" P/L PS2C TO MM33	1.49	—	—	0.03	—
69043	CONT	6" P/L PS2C TO MM31-L	2.25	—	0.04	0.01	—
69043	CONT	6" P/L PS2C TO MM31-S	2.03	—	0.07	—	—
69043	F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03	—	—	—
69043	F/AC	USE WEAKER SOURCE AS PER CUSTOMER	0.26	0.26	—	—	—
69168	CONT	HOOK UP MM31	1.03	—	—	—	—
69133	F/AC	RISER/CLAMP MM31	0.25	—	—	—	—
69133	CONT	RISER/CLAMP MM31-L	1.25	—	—	—	—
69133	CONT	RISER/CLAMP MM31-S	1.07	—	—	—	—
69133	CONT	RISER/CLAMP MM33	1.34	—	—	—	—
69133	F/AC	WAITING ON CUSTOMER	0.14	0.14	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		SUPPLIED BOLTS	0.63	—	—	—	—
68168	CONT	HOOK UP MM33	0.79	—	—	0.04	—
69133	CONT	RISER/CLAMP MM32-S	0.29	—	—	—	—
69133	F/AC	RISER/CLAMP MM32	0.73	—	—	—	—
69133	CONT	RISER/CLAMP MM32-L	0.81	—	—	—	—
69168	CONT	HOOK UP MM32	8.63	—	0.63	0.04	0.25
69063	CONT	6" P/L SHORE TO PS2	0.96	—	—	—	—
69012	CONT	INTER FIELD TOW TIME	1.05	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – ISSB	0.81	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – 1SSC	0.38	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.19	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.90	—	—	—	—
69123	CONT	RISER/CLAMP IS3	0.25	—	—	—	—
69073	F/AC	CUT/SALVAGE 6" P/L PS1C – IS3	0.08	—	—	—	—
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.62	—	—	—	—
69158	CONT	HOOK UP IS3	1.51	—	—	—	—
69033	CONT	MPTI ISSA 10"					

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
69033	CONT	MPTI ISSA 6"	1.83	—	—	—	—
69178	CONT	HOOK UP PS3C	1.70	—	—	—	—
69053	CONT	10" P/L PS3C TO BHSC	5.23	0.10	—	—	2.48
69003	CONT	DOWNTIME EQUIPMENT	0.31	—	0.31	—	—
69053	CONT	12" P/L PS3C TO BHJ2	5.02	—	0.38	0.36	—
69053	CONT	10" P/L PS3C TO BHJ2	4.29	—	0.38	—	0.54
69053	CONT	6" P/L BHSC TO BH29	3.01	0.35	0.21	0.15	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	1.15	—	—	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	0.07	0.07	—	—	—
69033	CONT	MPTI 6" ISSA	1.53	—	—	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.37	—	—	—	—
69033	CONT	MPTI 6" IS16	0.86	—	—	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	—	—	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	0.36	—	—	—	—
69053	CONT	6" P/L BH25 TO BHSC	1.96	—	0.24	0.13	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE TO UNCHARTED SITE	0.30	—	—	—	—
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	—	—	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	—	—	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05	—	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	1.12	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	3.73	-	-	-	2.87
69178	CONT	6" PIG BH29/BHSC	0.85	-	-	-	-
69183	INSUR.	REPAIR 10" RISER PS3C	0.24	-	-	-	-
		TOTAL	92.92	2.90	4.90	0.82	9.04

USEABLE FUEL AND WATER 24 HRS STATUS
JULY 2, 1983

	FUEL	WATER
1. OPENING INVENTORY	108724	279431
2. PRODUCED	0	7738
3. BARGE CONSUMED	1122	21508
4. CLOSING INVENTORY	107602	265661

EQUIP-MENT REPORT:	CONT. 69178 41200	CONT. 69178 34000	IN-SUR-ANCE 69183 00057	CONT. 69178 35900	CONT. 69178 48000
DERRICK BARGE 9	15	3.25	5.75		
JARAMAC 8	15	3.25	5.75		
JARAMAC 44	15	3.25	5.75		
INTERMAC 204	15	3.25	5.75		
ME5A STINGER	15	3.25	5.75		
GATE TIDE				14	10

MARINE MOVEMENTS:

NONE

SAFETY MEETING

20TH JUNE 1983 : FIRE AND SHIP ABANDON DRILL.
02TH JULY 1983 : SAFETY MEETING HELD.

ACCIDENT REPORT:

DERRICK BARGE 9 AND SPREAD – NONE

24 HOURS FORECAST

REPAIR 10" RISER AT PS3C, DO CROSS OVER AT 10" 12" AND 10" PS3C-BHJ2/BHSC.

ASSIST HOOK UP AT PS3.
GATE TIDE TO COMPLETE PAINTING ON BHSC/BHJ2 JACKET.

COMPLETION DATE:

PLAINTIFF'S EXHIBIT 3

PRESENT PROGRESS AND WEATHER – 0600 HRS.

JULY 3, 1983

DIVERS DOWN TAKING MEASUREMENT FOR ADD-ON FOR 10" P/L.

LOCATION	BH FIELD QATAR – PS3C PLATFORM.
WEATHER	FINE
WINDS	NW 8-10 KNOTS
SEAS	LESS THEN ONE FOOT
VISIBILITY	8-10 MILES

0001-0015	MOUNTING NO.5 DAVIT AND AIR TUGGER ON PORT SIDE OF BARGE.
0015-0040	WELDERS WELDING DOWN AIR TUGGER. M/W: CLEANING DECK TO WORK ON 10" RISER.
0040-0055	MOVED BARGE TO ALINE [sic] WITH 10" PIPELINE
0055-0208	DIVERS DOWN TO CONNECT DAVITS ONTO 10" PIPELINE.
0208-0220	DIVERS MOVED TOWARD DAMAGE PIPE TO MAKE CUT OFF.
0220-0333	DIVERS DOWN TO REMOVE BOLTS INORDER [SIC] TO DISCONNECT MONEL FROM RISER. CHANGE OUTDIVER.

0333-0350	DIVER DOWN TO CUT LAST BOLT INBE-TWEEN [SIC] MONEL AND RISER.
0350-0440	DIVER HOOKED DERRICK SLING TO RISER AND REMOVING BOLTS OF RISER CLAMPS.
0440-0505	REMOVED -35' ELEVATION CLAMP – CLAMP FOUND BENT.
0505-0600	REPAIRING UNDER WATER CLAMPS ON DECK.
	M/W: LOADING OUT JAR-8 WITH HOOK UP MATERIALS FOR BH29
0600	DIVERS DOWN TAKING MEASUREMENT FOR ADD-ON FOR 10" PIPELINE
	M/W: ASSISTING HOOK UP ON PS3C PLATFORM.
	M/W: GATE TIDE (PAINT BOAT) 0001-0530 STANDBY AT MOORING 0530-0600 DEPT. TO BHSC/BHJ2 P/FORM TO CONTINUE PAINTING.

PERSONNEL MOVEMENT: ARRIVAL/DEPARTURE – NONE

PERSONNEL LIST FOR JULY 2, 1983

CLASSIFICATION	TOTAL
1. WESTERN SUPERVISION	
A: MCDERMOTT	
BARGE SUPERINTENDENT	1
FIELD ENGINEER	1
CHIEF ENGINEER	0
FIRST ENGINEERS	1
SECOND ENGINEER	1
BARGE FOREMAN	1

RELIEF BARGE FOREMAN	1
WELDER FOREMAN	1
LEADERMAN	1
DERRICK OPERATORS	2
ANCHOR FOREMAN	0
HOIST OPERATORS	3
BARGE ELECTRICIAN	1
LEAD DIVER	1
DIVERS	3
DIVING SUPERVISOR	1
RADIOGRAPHERS	2
PIPE FITTER FOREMAN	1
SAFETY ENGINEER	1
PAINTER FOREMAN	1
B: SUB-CONTRACTORS	
SURVEYORS (HYDROSPACE)	4
DIVERS (HYDROSPACE)	2
DIVERS (U.W.W.)	3
STRESS RELIEVER (COOPERHEAT)	1
TOTAL WESTERN SUPERVISION	34
2. NON-WESTERN SUPERVISION	
A: MCDERMOTT	
NONE	0
B: SUB-CONTRACTORS	
X-RAY TECHNICIANS (VETCO)	2
TOTAL NON-WESTERN SUPERVISION	2
3. BELOW DECK	
A: MCDERMOTT	
1. WESTERN	
CHIEF STEWARD	1
MEDIC	1

2. ASIANS, S.E. ASIANS & INDIGENOUS

SENIOR CLERK	1
INTERMEDIATE CLERK	1
JUNIOR CLERK	1
MATERIAL CONTROLLER	1
MATERIAL CLERKS	2
MEDIC	1
SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	34
TOTAL BELOW DECK	62

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN	3
RIGGERS	27
RIGGERS (YARD)	7
TOTAL SUPPORTS	37

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMAN	2

PIPE FITTERS	16
PAINTERS	9
PIPING/MECHANICAL ENGINEER	1
TOTAL DIRECTS	54

5. CUSTOMER REPS.

Q.G.P.C. REPS	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	198

JULY 04TH, 1983
TELEX NO. DB9/07/027

'83 JUL 4 4:51

DERRICK BARGE 9 — PROGRESS REPORT FOR JULY 03, 1983

WEATHER	FINE
WINDS	NW-W 10-14 KNOTS
SEAS	1-2 FEET
VISIBILITY	8-10 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR – PS3C PLATFORM
WATER DEPTH	100 FEET

JOB NUMBER 69183-00057 — CONTRACT: REPAIR 10" RISER AT PS3 ON BHSC PIPELINE.

0001-0015	RIGGED UP NO.5 DAVIT AND AIR TUGGER ON THE PORT SIDE OF DB9.
0015-0040	WELDED AIR TUGGER TO THE DECK OF THE BARGE. M/W: RE-ARRANGE MATERIAL ON DB DECK TO MAKE ROOM FOR FABRICATION OF 10" RISER.
0040-0055	MANOEUVRED [SIC] BARGE AND ALIGNED SAME WITH THE 10" PPELINE [SIC] ON SEABED.
0055-0208	DIVER ON SEABED, CONNECTED DAVIT CABLE WITH THE 10" P.L.
0208-0220	DIVER SWAM TOWARDS THE DAMAGE PIPE AND PREPARED TO MAKE CUT OFF.
0220-0330	DIVER REMOVED BOLTS ON THE MONEL SECTION OF THE RISE.. M/W: LOWERED PIPELINE DOWN.
0330-0350	DIVER CUT OUT THE LAST BOLT BETWEEN THE MONEL SECTION OF THE RISER.
0350-0440	DIVER CONNECTED DERRICK CRANE SLINGS TO THE RISER AND REMOVED BOLTS FROM RISER CLAMPS.
0440-0505	REMOVED -35" ELEVATION CLAMP – CLAMP FOUND TO BE BENT.
0505-0600	REPAIR UNDER WATER CLAMPS ON DB DECK. M/W: LOADED HOOK UP MATERIALS FRO [SIC] BH29 ON JAR-8
0600-0706	DIVERDOWN. TOOK MEASUREMENT FOR ADD – ON TO 10" PIPELINE.
0706-0815	PICKED UP 10" PIPELQNE [SIC] TO SURFACE AND SECURED SAME TO THE SIDE OF THE BARGE.

	ALSO ERECTED SCAFFOLDING UNDER THE END OF THE PIPELINE.
0815-0880	BROKE CEMENT FROM PIPELINE AND PREPARED TO MAKE CUT OUT.
0830-0900	CUT OUT THE RISER FROM THE PIPELINE AND BEVELLED THE CUT ON THE PIPELINE.

PLAINTIFF'S EXHIBIT 5

0900-1100	FABRICATING 10" RISER ON DB DECK. M/W: 0900-0950 DIVER INSTALLED 10" RISER CLAMP ON PSS AT -30' ELEVATION.
1100-1130	X-RAYED WELDS ON 10" RISER.
1130-1230	RIGGED UP AND ATTEMPTED TO INSTALL BALL PIG IN THE 10" RISER.
1230-1245	BEVELED PIPE ON THE INSIDE INORDER [SIC] TO INSERT BALL PIG.
1245-1400	INSERTED PIG IN RISER, REBEVELED PIPE AND MADE UP MONEL JOINT.
1400-1430	RIGGED UP TO PICK UP AND STAB 10" RISER TO THE PIPELINE.
1430-1515	PICKED UP AND STABBED THE 10" RISER TO THE 10" PIPELINE
1515-1625	WELDED THE 10" RISER TO THE 10" PIPELINE.
1625-1635	X-RAYED WELD.
1635-1700	WELD FOUND TO BE OKAY, WRAP WELD AND DERIG SCAFFOLDING.
1700-1900	LOWERED RISER AND PIPELINE TO SEABED, DIVERS INSTALLED THE RISER IN THE CLAMPS.

1900-1925 DIVER CHECKED THE 10" PIPELINE AND DISCONNECTED DAVITS FROM THE PIPELINE.

1925-2015 BROUGHT ALL DAVITS CABLES BACK TO SURFACE AND RIGGED UP TO RELOCATE SUBSEA RISER CLAMP.

2015-2100 DIVER TIGHTEN THE FACE PLATE ON THE RISER CLAMP AND LOOSEN THE BOLTS OF THE BRACING PLATZ, TO LET THE RISER MOVE OVER THE FIT IN THE +10' ELEVATION CLAMP.

2100-2300 DIVER CONTINUE STRAIGHTENING AND LEVELING OUT THE SUBSEA RISER CLAMP.
CHANGE OUT DIVERS.

2300-2400 DIVERS DOWN STRAIGHTENING RISER AT -30' ELEVATION CLAMP.

MEANWHILE: HOOK UP
0001-2400 ASSISTING HOOK UP CREW ON PS3C AND BH29 P/FORMS

MEANWHILE: GATE TIDE (PAINT BOAT)
0001-0530 STAND BY AT MOORING.
0530-1900 DEPT. TO BHSC/BHJ2 TO CONTINUE PAINTING
2900-2400 DEPT. TO MOORING AND STANDBY

ACCUMULATED TOTAL DAYS:

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
69012	CONT	2ND MOB/DEMOB OF DB09	1.32	— —	—	—
69002	CONT	RIG UP DB09 & STINGER	1.37	— 1.28	—	—
69043	CONT	6" P/L PS2C TO MM32-L	5.00	0.50 0.93	—	0.88
69183	INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	— —	—	—
69043	CONT	6" P/L PS2C TO MM32-S	3.00	— 0.39	0.06	—
69043	F/AC	EXTRA WORK MANOEUVER BARGE BETWEEN EXISTING M/BUOY - PS2C	0.05	— —	—	—
69043	CONT	6" P/L PS2C TO MM33	1.49	— —	0.03	—
69043	CONT	6" P/L PS2C TO MM31-L	2.25	— 0.04	0.01	—
69043	CONT	6" P/L PS2C TO MM31-S	2.03	— 0.07	—	—
69043	F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03 —	—	—
69043	F/AC	USE WEAKER SOURCE AS PER CUSTOMER	0.26	0.26 —	—	—
69168	CONT	HOOK UP MM31	1.03	— —	—	—
69133	F/AC	RISER/CLAMP MM31	0.25	— —	—	—
69133	CONT	RISER/CLAMP MM31-L	1.25	— —	—	—
69133	CONT	RISER/CLAMP MM31-S	1.07	— —	—	—
69133	CONT	RISER/CLAMP MM33	1.34	— —	—	—
69133	F/AC	WAITING ON CUSTOMER	0.14	0.14 —	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
		SUPPLIED BOLTS					
68168	CONT	HOOK UP MM33	0.63	—	—	—	—
69133	CONT	RISER/CLAMP MM32-S	0.79	—	—	0.04	—
69133	F/AC	RISER/CLAMP MM32	0.29	—	—	—	—
69133	CONT	RISER/CLAMP MM32-L	0.73	—	—	—	—
69168	CONT	HOOK UP MM32	0.81	—	—	—	—
69063	CONT	6" P/L SHORE TO PS2	8.63	—	0.63	0.04	0.25
69012	CONT	INTER FIELD TOW TIME	0.96	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C - ISSB	1.05	—	—	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C - 1SSC	0.81	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.38	—	—	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.19	—	—	—	—
69123	CONT	RISER/CLAMP IS3	0.90	—	—	—	—
69073	F/AC	CUT/SALVAGE 6" P/L PS1C - IS3	0.25	—	—	—	—
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.08	—	—	—	—
69158	CONT	HOOK UP IS3	0.62	—	—	—	—
69033	CONT	MPTI ISSA 10"	1.51	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69033	CONT	MPTI ISSA 6"	1.83	—	—	—	—
69178	CONT	HOOK UP PS3C	1.70	—	—	—	—
69053	CONT	10" P/L PS3C TO BHSC	5.23	0.10	—	—	2.48
69003	CONT	DOWNTIME EQUIPMENT	0.31	—	0.31	—	—
69053	CONT	12" P/L PS3C TO BHJ2	5.02	—	0.38	0.36	—
69053	CONT	10" P/L PS3C TO BHJ2	4.29	—	0.38	—	0.54
69053	CONT	6" P/L BHSC TO BH29	3.01	0.35	0.21	0.15	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	1.15	—	—	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	0.07	0.07	—	—	—
69033	CONT	MPTI 6" ISSA	1.53	—	—	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.37	—	—	—	—
69033	CONT	MPTI 6" IS16	0.86	—	—	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	—	—	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	0.36	—	—	—	—
69053	CONT	6" P/L BH25 TO BHSC	1.96	—	0.24	0.13	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE TO UNCHARTED SITE	0.30	—	—	—	—
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	—	—	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	—	—	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05	—	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	—	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	1.12	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	3.73				2.87
69178	CONT	6" PIG BH29/BHSC	0.85				
69183	INSUR.	REPAIR 10" RISER PS3C	1.24				
		TOTAL	93.92	2.90	4.89	0.82	9.04

USEABLE FUEL AND WATER 24 HRS STATUS
JULY 3, 1983

	FUEL	WATER
1. OPENING INVENTORY	107602	265661
2. PRODUCED	0	9791
3. ISSUED TO JAR-8	0	4579
4. BARGE CONSUMED	1122	21084
5. CLOSING INVENTORY	106480	249789

EQUIPMENT REPORT	INSURANCE	CONT.	CONT.
DERRICK	69183	69178	69178
BARGE 9	00057	35900	48000
JARAMAC 44	24		
JARAMAC 8	24		
INTERMAC 204	24		
ME5A STINGER	24		
GATE TIDE		13.50	10.50

MARINE MOVEMENTS:

1530 HRS TRITON ARRIVED FROM DB27 TO DB9.
1830 HRS TRITON DEPT. TO DB17.

SAFETY MEETING

20TH JUNE 1983 : FIRE AND SHIP ABANDONDRILL [SIC].

02TH JULY 1983 : SAFETY MEETING HELD.

ACCIDENTS LAST 24 HOURS

DERRICK BARGE 9 /SPREAD – NONE

24 HOURS FORECAST

DOING CROSSOVER OF 10", 12" AND 10" PS3C TO BSC/BHJ2 LINES.

ASSIST HOOK UP ON BH29 AND PS3C.
GATE TIDE - CARRY ON PAINTING ACTIVITIES.

ESTIMATED TIME OF COMPLETION

N/A

PRESENT PROGRESS AND WEATHER - 0600 HRS.
JULY 4, 1983

ASSISTING HOOK UP CREW ON PS3C PLATFORM.

LOCATION	BH FIELD QATAR, PS3C LOCATION
WEATHER	FINE
WINDS	NW-W LESS THEN [SIC] 5 KNOTS
SEAS	NIL
VISIBILITY	8-10 MILES

0001-0200	DIVERS DOWN ALIGNING -30' ELEVATION CLAMP AND TIGHTENING BRACE.
0200-0600	ASSISTING HOOK UP CREW ON PS3C PLATFORM. M/W:
0230-0315	DIVERS DOWN TO SURVEY 10" AND 12" FOR SUSPNSION [SIC]
0425-0500	DIVERS DOWN GROUTING UNDER TUBE TURN ON 10" AND 12" RISER

GATE TIDE

0001-0530 STAND BY ALONGSIDE DB9
0530-0600 LOADING MATERIALS FOR BHSC/BHJ2 PLATFORM

PERSONNEL MOVEMENTS

ARRIVAL	DEPARTURE
B. HALE	P. BARTON
S. MCCOTTER	I. FRAZER
K. MARTIN	J. MCMULLEN
D. GILL	
E. PETERSON	

PERSONNEL LIST FOR JULY 3, 1983

CLASSIFICATION		TOTAL
1. WESTERN SUPERVISION		
A: MCDERMOTT		
BARGE SUPERINTENDENT		1
FIELD ENGINEER		1
CHIEF ENGINEER		1
FIRST ENGINEERS		1
SECOND ENGINEER		1
BARGE FOREMAN		1
RELIEF BARGE FOREMAN		1
WELDER FOREMAN		1
LEADERMAN		1
DERRICK OPERATORS		2
ANCHOR FOREMAN		0
HOIST OPERATORS		4
BARGE ELECTRICIAN		1
LEAD DIVER		1
DIVERS		2
DIVING SUPERVISOR		1
RADIOGRAPHERS		2
PIPE FITTER FOREMAN		1
SAFETY ENGINEER		1
PAINTER FOREMAN		1
B: SUB-CONTRACTORS		
SURVEYORS	(HYDROSPACE)	4
DIVERS	(HYDROSPACE)	2
DIVERS	(U.W.W.)	1
STRESS RELIEVER	(COOPERHEAT)	1
DIVERS	(FRAZER)	2
TOTAL WESTERN SUPERVISION		35

2. NON-WESTERN SUPERVISION

A: MCDERMOTT

NONE	0

B: SUB-CONTRACTORS

X-RAY TECHNICIANS	(VETCO)	2
TOTAL NON-WESTERN SUPERVISION		2

3. BELOW DECK

A: MCDERMOTT

1. WESTERN

CHIEF STEWARD	1
MEDIC	1

2. ASIANS, S.E. ASIANS & INDIGENOUS

SENIOR CLERK	1
INTERMEDIATE CLERK	1
JUNIOR CLERK	1
MATERIAL CONTROLLER	1
MATERIAL CLERKS	2
MEDIC	1
SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	34
TOTAL BELOW DECK	62

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN		3
RIGGERS		27
RIGGERS	(YARD)	7
TOTAL SUPPORTS		37

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMAN	2
PIPE FITTERS	16
PAINTERS	9
PIPING/MECHANICAL ENGINEER	1
TOTAL DIRECTS	54

5. CUSTOMER REPS.

Q.G.P.C. REPS	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	199

JULY 05TH, 1983
TELEX NO. DB9/07/031
'83 JUL 5 5:33

DERRICK BARGE 9

PROGRESS REPORT
FOR JULY 04, 1983

WEATHER — FINE
WINDS — NW-W 5-8 KNOTS

SEAS	1-2 FEET
VISIBILITY	8-10 MILES
BARGE SUPERINTENDENT	R.D. CARL
FIELD ENGINEER	G. ROOZITALAB
LOCATION	BH FIELD QATAR – PS3C PLATFORM
WATER DEPTH	100 FEET

JOB NUMBER	INSURANCE
69183-00057	REPAIR 10" RISER AT PS3 ON THE BHSC PIPELINE
0001-0200	DIVERS DOWN. ALIGNING -30' ELEVATION RISER CLAMP AT PS3 ON THE 10" RISER.

JOB NUMBER	CONTRACT
69173-35900	BARGE SUPPORT DURING HOOK UP
0200-0745	ASSISTING HOOK UP CREW WITH HOOK UP ON PS3C

MEANWHILE:

JOB NUMBER	CONTRACT
69113-41000	INSTALL PIPELINE CROSSING
0230-0315	DIVERS MADE SURVEY OF SUSPENSION ON THE 10" AND 12" PIPELINE.
0415-0500	DIVER DOWN, GROUTING UNDER THE TUBE TURN ON THE 10" AND 12" RISER AT PS3.

MEANWHILE:

JOB NUMBER	INSURANCE
	69183-00057REPAIR 10" RISER AT PS3
	0645-0730DIVERS DOWN TIGHTEN -30' ELEVATION RISER CLAMP AT PS3 ON THE 10" RISER.
	NOTE: HAD TO CUT OUT FLANGE ON TOPSIDE PIPING INORDER [SIC] TO ALIGN SAME WITH RISER.
0730-0810	DIVER DOWN TO TAKE VIDEO OF 10" RISER – VIDEO MALFUNCTIONING.
0810-0845	DIVER TOOK PHOTOGRAPHS OF THE 10" RISER AT PS3 (PS3 TO BHJ2)

JOB NUMBER	CONTRACT
69113-41000	INSTALL 14 PIPELINE CROSSING IN BH FIELD
0745-0755	MOVED BARGE FORWARD AND SET UP OVER THE 6" CROSSOVER (6" PIPELINE FROM BHJ26).
0755-0825	DIVERS RIG UP TO PLACE GROUP BAGS UNDER THE PIPELINES CROSSING.
0825-0954	DIVER PLACED CEMENT BLOCKS UNDER THE 10" PIPELINE (PS3 BHSC)

0945-1005	DIVER SURVEYED BOTH SIDES UP THE CROSS OVER FOR SUSPENSIONS.
1005-1100	RIGGED UP CEMENT BLOCKS AND BAGS TO PLACE AT THE 10" AND 12" PIPELINE CROSSING.
1100-1230	RIGGED UP CEMENT BLOCKS AND CRADLE FOR BAGS.
1230-1440	DIVER PLACED GROUT BAGS ON SUSPENSION UNDER 10" P/LINE. MOVED BARGE OVER TO THE 12" PIPELINE CROSSING LOCATION. DIVER RETURNED BACK TO SURFACE
1440-1600	RIGGED UP TO PLACE CEMENT BLACKS [SIC] ON SUSPENSION UNDER THE 12" PIPELINE.
	M/W: BROUGHT GATE TIDE ALONGSIDE [SIC] DB9 WITH TWO INJURED PERSONNEL FROM BH29 (SEE ACCIDENT LAST 24 HRS)
1600-1700	DIVER PLACED CEMENT BLOCKS UNDER THE 12" PIPELINE. (9" CLEARANCE OF 6" P/L)
1700-1730	CHANGED OUT DIVERS
1730-1945	DIVER PLACED 2 BLOCKS AND 8 SOLF BAGS UNDER THE 12" LINE
1945-2045	DIVER DECOMPRESSING IN CHAMBER.
2045-2330	DIVER DOWN CONTINUE PLACING CEMENT BLOCKS AND GROUT BAGS UNDER 12" PIPELINE PLACED TWO SINGLE BAGS UNDER 10" PIPELINE FROM PS3 TO BHJ2 20 FEET APART.
2330-2400	CHANGED OUT DIVER.
	M/W: OFFLOADED JARAMAC 8 AND LOADED WITH AIR COMPRESSURE.

NOTE:
REQUESTED QGPC FOR PERMISSION TO MOVE BARGE TO LOCATION OF 10" PIPELINE, (PICK UP AND LAY TO BHSC) QGPC REFUSED PERMISSION TO MOVE THE BARGE DURING HOURS OF DARKNESS.

MEANWHILE: HOOK UP

0001-2400 ASSISTING HOOK UP CREW ON PS3C AND BH29 P/FORMS

MEANWHILE: GATE TIDE (PAINT BOAT)

0001-0530	STANDBY AT MOORING ANCHOR.
0530-1800	MOVED TO BH29 PLATFORM AND RESUMED PAINTING AND SANDBLASTING ACTIVITIES.
1800-2400	ALONGSIDE DB9.

MEANWHILE:

JOB NUMBER	CONTRACT
69173-41200	PURGE, PIG AND TEST (6" BH29-BHSC)
0630-0730	RIGGED UP JAR-8 TO TEST 6" P/LINE.
0730-0900	JAR-8 DEPT. TOBHSC TO COMMENCE TEST.
0900-1200	RETURN TO DB9 TO REPAIR HIGH PRESSURE PUMP, DUE TO PUMP MALFUNCTIONING.

1200-1410	DEPT. TO BHSC AND STARTED PUMPING, BROUGHT UP PRESSURE TO 4450 PSI
1410-1430	PRESSURE FELL TO ZERO. RETURNED TO DB9.
AT 1800 HRS	JAR44 DEPT TO BH29 PLATFORM.
1900 HRS	JAR-8 DEPT. TO BHSC. CREW FROM JAR44 TIGHTENING FLANGES AFTER BLEEDING ALL AIR OUT
2015 HRS	JAR-8 CREW COMMENCE TEST AT BH29 ON 6" P/LINE FROM BH29-BHSC. LEAK ON BHSC, BLEED [SIC] DOWN PRESSURE AND TIGHTENED FLANGES.
2145 HRS	BROUGHT UP PRESSURE AT BHSC.
2220 HRS	TEST ON 4450 PSI WITNESS BY QGPC.
2310 HRS	JAR-44 AND JAR-8 RETURNED TO DB9

ACCUMULATED TOTAL DAYS:

M/R. TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69012 CONT	2ND MOB/DEMOB OF DB09	1.32	—	—	—	—
69002 CONT	RIG UP DB09 & STINGER	1.37	—	1.28	—	—
69043 CONT	6" P/L PS2C TO MM32-L	5.00	0.50	0.93	—	0.88
69183 INSU	SURVEY/REPAIR MM91 (MM32-L) PS2 P/L	0.29	—	—	—	—
69043 CONT	6" P/L PS2C TO MM32-S	3.00	—	0.39	0.06	—
69043 F/AC	EXTRA WORK MANOEUVER BARGE BETWEEN EXISTING M/BUOY - PS2C	0.05	—	—	—	—
69043 CONT	6" P/L PS2C TO MM33	1.49	—	—	0.03	—
69043 CONT	6" P/L PS2C TO MM31-L	2.25	—	0.04	0.01	—
69043 CONT	6" P/L PS2C TO MM31-S	2.03	—	0.07	—	—
69043 F/AC	STOP LAYING, WAITING ON CUSTOMER	0.03	0.03	—	—	—
69043 F/AC	USE WEAKER SOURCE AS PER CUSTOMER	0.26	0.26	—	—	—
69168 CONT	HOOK UP MM31	1.03	—	—	—	—
69133 F/AC	RISER/CLAMP MM31	0.25	—	—	—	—
69133 CONT	RISER/CLAMP MM31-L	1.25	—	—	—	—
69133 CONT	RISER/CLAMP MM31-S	1.07	—	—	—	—
69133 CONT	RISER/CLAMP MM33	1.34	—	—	—	—
69133 F/AC	WAITING ON CUSTOMER	0.14	0.14	—	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
		SUPPLIED BOLTS				
68168	CONT	HOOK UP MM33	0.63	— —	—	—
69133	CONT	RISER/CLAMP MM32-S	0.79	— —	0.04	—
69133	F/AC	RISER/CLAMP MM32	0.29	— —	—	—
69133	CONT	RISER/CLAMP MM32-L	0.73	— —	—	—
69168	CONT	HOOK UP MM32	0.81	— —	—	—
69063	CONT	6" P/L SHORE TO PS2	8.63	— 0.63	0.04	0.25
69012	CONT	INTER FIELD TOW TIME	0.96	— —	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – ISSB	1.05	— —	—	—
69123	F/AC	REPLACE 10" RISER FLANGE AT PS1C – 1SSC	0.81	— —	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSA LINE	0.38	— —	—	—
69123	F/AC	TEST PIPING, INSTALL CHOKE VALVES PS1C ON 10" ISSB LINE	0.19	— —	—	—
69123	CONT	RISER/CLAMP IS3	0.90	— —	—	—
69073	F/AC	CUT/SALVAGE 6" P/L PS1C – IS3	0.25	— —	—	—
69123	F/AC	INSTALL RISER & CLAMPS IS3	0.08	— —	—	—
69158	CONT	HOOK UP IS3	0.62	— —	—	—
69033	CONT	MPTI ISSA 10"	1.51	— —	—	--

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY EQPT	W/REP	WOW
69033	CONT	MPTI ISSA 6"	1.83	— —	—	—
69178	CONT	HOOK UP PS3C	1.99	— —	—	—
69053	CONT	10" P/L PS3C TO BHSC	5.23	0.10 —	—	2.48
69003	CONT	DOWNTIME EQUIPMENT	0.31	— 0.31	—	—
69053	CONT	12" P/L PS3C TO BHJ2	5.02	— 0.38	0.36	—
69053	CONT	10" P/L PS3C TO BHJ2	4.29	— 0.38	—	0.54
69053	CONT	6" P/L BHSC TO BH29	3.01	0.35 0.21	0.15	—
69143	CONT	RISER/CLAMP 10" PS3C-BHJ2	1.15	— —	—	—
69143	F/AC	WAITING ON CUSTOMER, TO START HOT WORK	0.07	0.07 —	—	—
69033	CONT	MPTI 6" ISSA	1.53	— —	—	—
69033	F/AC	CUT/REPLACE 6" P/L MPTI (ISSA)	0.37	— —	—	—
69033	CONT	MPTI 6" IS16	0.86	— —	—	—
69093	CONT	CROSSOVER 6"/12" PS1-SHORE	0.36	— —	—	—
69033	CONT	CROSSOVER 6"/24" PS1-SHORE	0.36	— —	—	—
69053	CONT	6" P/L BH25 TO BHSC	1.96	— 0.24	0.13	—
69053	F/AC	RELOCATE NO. 3 ANCHOR DUE TO UNCHARTED SITE	0.30	— —	—	—
69143	CONT	RISER/CLAMP 12" PS3C-BHJ2	1.29	— —	—	—
69143	CONT	RISER/CLAMP 10" PS3C-BHSC	0.69	— —	—	—
69178	F/AC	WAITING ON CUSTOMER TO ISSUE WORK PERMIT	0.05	0.05 —	—	—
69143	F/AC	REMOVE 6" RISER AT BHJ2	0.20	— —	—	—

M/R.	TYPE	DESCRIPTION	ACC. TOTAL CONT/F.ACC	DOWN TIME S/BY	EQPT	W/REP	WOW
69143	F/AC	S/BY OIL/GAS LEAKS AT BHJ2/BHSC	0.09	0.09	—	—	—
69178	CONT	HOOK UP BHSC/BHJ2	8.95	—	—	—	2.02
69143	F/AC	6" RISER AT BHJ2	0.58	—	—	—	—
69143	CONT	10" RISER AT BHJ2	1.22	—	—	—	—
69178	F/AC	S/BY ON CUSTOMER, TO MOVE INTO BHSC/BHJ2	1.31	1.31	—	—	—
69143	CONT	12" RISER AT BHJ2	0.86	—	—	—	—
69178	CONT	10" PIG PS3C TO BHJ2	0.15	—	—	—	—
69178	CONT	12" PIG PS3C TO BHJ2	0.57	—	—	—	—
69143	CONT	B/LANDING AT BHJ2	0.52	—	—	—	—
69143	CONT	VIDEO RISER AT BHJ2	0.12	—	—	—	—
69143	CONT	6" RISER BHSC/BH29	1.23	—	—	—	—
69143	CONT	6" RISER/OFFSET AT BH29	1.12	—	0.04	—	—
69178	CONT	HOOK UP BH29 P/F	3.73	-	-	-	2.87
69178	CONT	6" PIG BH29/BHSC	0.85	-	-	-	-
69183	INSUR.	REPAIR 10" RISER PS3C	1.32	-	-	-	-
69113	CONT	14 P/L CROSSING AT BH	0.62	-	-	-	-
		TOTAL	94.92	2.90	4.90	0.82	9.04

USEABLE FUEL AND WATER 24 HRS STATUS
JULY 04TH, 1983

	FUEL	WATER
1. OPENING INVENTORY	106480	249789
2. PRODUCED	0	10799
3. ISSUED TO TRITON	738	0
4. BARGE CONSUMED	1132	15810
5. CLOSING INVENTORY	104610	244778

EQUIPMENT	IN-SURANCE	CONT.	CONT.	CONT.	CONT.
REPORT:	69183	69178	69113	69178	69178
DERRICK BARGE 9	00057	35900	41000	48000	41200
JARAMAC 44	2	2	5.75	16.25	5
JARAMAC 8	2	2	5.75	11.25	
INTERMAC 204	2	2	4.50	4.5	13
ME5A STINGER GATE TIDE	2	2	5.75	16.25	
			12.50	11.50	

MARINE MOVEMENTS:
NONE

SAFETY MEETING:
20TH JUNE 1983 : FIRE AND SHIPABANDON DRILL
02ND JULY 1983 : SAFETY MEETING HELD.

ACCIDENT REPORT:
DERRICK BARGE 9 LOCATION : BH FIELD, BH29 P L A T F O R M (GATE TIDE)
TIME : 1410 HRS
SUBJECT : JON WILANDER - PAINT FMN - (04612)
VIC DE LEON - PAINTER - (82646)

BOTH SUBJECT [SIC] WERE ON THE GATE TIDE WHEN THEY RECEIVE [SIC] A CALL FROM JAR-8 TO GO ONTO THE BH29 P/F AND CHECK ON A FLANGE TO SEE IF THERE WAS [SIC] ANY LEAKS, THEY WERE TOLD THAT THE TEST WAS ON HOLDING 4450 PSI.
WHILE CHECKING FOR LEAKS THE PLUG ON ONE OF THE FLANGE [SIC] THAT WAS LEAKING ON BH29 BLOWED [SIC] OUT OF THE FLANGE BECAUSE OF THE PRESSURE STRIKING BOTH MEN ON THE HEAD.

INJURY
JON WILANDER RECEIVED SEVERE TRAUMA TO THE FOREHEAD.
HE RECEIVED THE FULL IMPACT FROM THE PLUG.

VIC DE LEON RECEIVED SEVERE LACERATION AND DAMAGED TISSUE, TO THE TEMPORAL ON THE RIGHT SIDE OF THE HEAD.

AT 1520 HRS BOTH MEN WERE EVACUATED BY HELICOPTER FROM QGPC LIVING QUARTERS, TO RUMAILAH HAMAD HOSPITAL, DOHA. ACCOMPANIED BY MEDIC RIC TANVECO.

24 HOURS FORECAST:

CROSSING 12" AND 10" PS3C TO BHSC/BHJ2, LINES, PICK UP ANCHORS AND TOW AND SET UP TO CONTINUE LAYING 10" PIPELINE PS3C-BHSC.

DIVERS TO CHECK STINGER
ASSIST HOOK UP ON BHSC/BHJ2.
GATE TIDE CONTINUE PAINTING ON BH29 PLATFORM.

COMPLETION DATE:

PRESENT PROGRESS AT 0600 HRS.
JULY 5, 1983

DIVER CUTTING STINGER PINS FROM STERN OF BARGE. ALSO, PRESSURE TESTING 6" P/L (BHSC – BH29) – PRESSURE HOLDING AT 4450 PSI.

LOCATION	BH FIELD QATAR – PS3C LOCATION
WEATHER	PARTLY CLOUDY
WINDS	NW-W 5-8 KNOTS
SEAS	1-2 FEET
VISIBILITY	8-10 MILES

0001-0035	DIVERS DOWN PLACING GROUT BAGS UNDER 10" PIPELINE (PS3 – BHSC)
0035-0055	DIVERS SURVEY 10" AND 12" PIPELINE
0055-0115	REPAIRING WEIGHT COAT WHICH IS DAMAGE ON 6" PIPELINE.
0115-0130	MOVE BARGE INTO PS3C PLATFORM.
0130-0600	DIVERS CUTTING STINGER PINS FROM STERN OF BARGE
0530-0600	FITTING 10" SPOOL FLANGE AND WELDING OUT SAME. X-RAYED WELD – FOUND OUT OKAY.

M/W: OFFLOADED ALL 6" AND 12" PIPES ON TO INT-204 AND 10" PIPES ONTO DB9 DECK.

SENIOR MEDIC	0
FIRST ENGINEERS	2
SECOND ENGINEER	0
THIRD ENGINEERS	8
BARGE ELECTRICIANS	2
MACHINIST	1
MCD. YARD PERSONNEL	3
CARPENTERS	2
BARBER	1

B: SUB-CONTRACTORS

ALBERT ABELA	34
TOTAL BELOW DECK	61

4. PRODUCTIVE LABOUR (ASIANS, S.E. ASIANS & INDIGENOUS)

A: SUPPORTS

RIGGER FOREMEN	3
RIGGERS	27
RIGGERS (YARD)	7
TOTAL SUPPORTS	37

B: DIRECTS

WELDER FOREMAN	1
WELDERS	20
CRAWLER CRANE OPERATORS	3
WELDER HELPERS	2
PIPE FITTER FOREMAN	2
PIPE FITTERS	16
PAINTERS	8
PIPING/MECHANICAL ENGINEER	1
TOTAL DIRECTS	53

5. CUSTOMER REPS.

Q.G.P.C. REPS	4
WELDING INSPECTORS	5

6. VISITORS

NONE	0
GRAND TOTAL	193

Apellido (s) Last Name (s): W. LANDER
Nombre Name: JON
Nacionalidad Nationality: U-S.
Nº de Pasaporte Passport Nº: C-706975
Fecha de Nacimiento Date of Birth: 38
País de Nacimiento Country of Birth: U-S-A
Ocupación Occupation: Marino
Fecha de Expiración Valid Until: 29-3-84
Nº 013435
Lugar de Expedición Place of Issue: NUEVA ORLEANS
Nombre y firma de quien Expide Name and Signature of Issuing Officer: Cónsul Honorario

REPUBLICA DE PANAMA

MINISTERIO DE HACIENDA Y TESORO

DIRECCION GENERAL CONSULAR Y DE NAVES

Este documento ha sido expedido de acuerdo con las leyes y reglamentaciones vigentes de la República de Panamá y de conformidad con el Convenio 108 relativo a los Documentos de Identidad de la Gente de Mar, 1958, de la Organización Internacional del Trabajo.

El Gobierno de la República de Panamá solicita a las autoridades de los Gobiernos este quienes se presente este documento, faciliten a su titular el ejercicio de sus derechos con sujeción a las condiciones previstas en el Convenio mencionado, como reciprocamente, de acuerdo con la costumbre internacional, la República de Panamá hace en casos semejantes.

REPUBLIC OF PANAMA

MINISTRY OF FINANCE AND TREASURY

DIRECTORATE GENERAL OF CONSULAR AND MARITIME AFFAIRS

This document has been issued in accordance with the laws and regulations in force in the Republic of Panama and with Convention 108 Relating to Identification Documents for Seafarers, 1958 of the International Labor Organization.

The Government of the Republic of Panama requests the authorities of the Governments before which this document is exhibited to facilitate to its holder the exercise of his rights, subject to the conditions prescribed in the above mentioned Convention, such as the Republic of Panama does reciprocally, in similar cases, in accordance with international practice.

DISTINTIVO DE LLAMADA
CODE LETTERS
H09732

REPUBLICA DE PANAMA
MINISTERIO DE HACIENDA Y TESORO
DIRECCION GENERAL DE CONSULAR Y DE NAVES
MARINA MERCANTE NACIONAL

NUMERO OFICIAL
OFFICIAL REGISTRATION NO.
No. 6301-PEXT-2

Sitor No.42205

SERVICIO INTERNACIONAL
PATENTE PROVISIONAL DE NAVEGACION

De acuerdo al cumplimiento de los requisitos estipulados en la Ley 8a. de 12 de enero de 1925, aprobados por la Diligencia de Matrícula No. ____ de ____ de Marzo de 197 84, expedida por esta Oficina SE AUTORIZA Y CONCEDE a la nave cuyas características se detallan a continuación y la cual se dedicará exclusivamente al servicio de Abastecimiento, la presente PATENTE PROVISIONAL DE NAVEGACION para todos los fines respectivos que otorga el Registro de la Marina Mercante de la República de Panamá.

In accordance with the requirements established by the Ordinance No.8, dated the 12th of January 1925, the registration requested in Form No. ____, dated the ____ of ____ of 197____, has been approved by this office. Therefore, the Panama Merchant Marine Registry hereby GRANTS AND AUTHORIZES this Provisional Registration of Navigation Certificate to the vessel, whose particulars are described below, and which will be used exclusively for ____

DATOS DE IDENTIFICACION DE LA NAVE
PARTICULARS OF THE VESSEL

NOMBRE DE LA NAVE: NAME OF THE VESSEL: "MCDERMOTT UTILITY BARGE NO.7"	PROPIETARIO Y DOMICILIO: OWNER'S NAME AND ADDRESS: MCDERMOTT INCORPORATED
NOMBRE ANTERIOR: PREVIOUS NAME: MCDERMOTT DERRICK BARGE NO.7"	REPRESENTANTE LEGAL Y DOMICILIO: NAME AND ADDRESS OF LEG. REPRESENTATIVE: DURLING & DURLING, PANAMA REP. DE PANAMA
NACIONALIDAD QUE RENUNCIA: PREVIOUS NATIONALITY: NINGUNA	RESPONSABLE DE LAS CUENTAS DE RADIO Y DOMICILIO: NAME AND ADDRESS OF COMPANY RESPONSABLE FOR RADIO EXPENSES: LOS DUEÑOS

CONSTRUIDO EN: BUILT IN:	FECHA: DATED:	CONSTRUCTORES: BUILDERS:
AVONDALE, LOUISIANA, U.S.A.	1953	AVONDALE MARINE WAYS INC.

NUMERO DE: NUMBER OF:	MATERIAL DEL CASCO: MATERIAL OF THE HULL	DIMENSIONES PRINCIPALES MAIN MEASUREMENTS	TONELAJE TONNAGE
CUBIERTAS DECKS -----	ACERO	ESLORA LENGTH 91.44 MTS.	BAJO CUBIERTA UNDER DECK 3,055.04
MASTILES MASTS -----		MANGA BREADTH 27.43	BRUTO GROSS 3,203.63
CHIMENEAS FUNNEL -----		PUNTAL DEPTH 3.61 MTS.	NETO NET 2,438.00

SERVICIO A QUE SE DEDICA LA NAVE
KIND OF SERVICE GIVEN BY THE VESSEL

CARGA SECA DRY CARGO	CARGA LIQUIDA LIQUID CARGO	PASAJEROS PASSENGERS	MIXTO MIXED	PESCA DE FISHING OF	DE SERVICIO DE KIND OF SERVICE
---	-----	1A. CLASE 1ST. CLASS ----- 2A. CLASE 2ND. CLASS ----- 3A. CLASE 3RD CLASS -----	---	-----	ABASTECIMIENTO

SISTEMA DE PROPULSION
PROPULSION SYSTEM

CLASE Y NUMERO DE MAQUINAS O MOTORES: ---SIN PROPULSION-----
TYPE AND NUMBER OF ENGINES

NUMERO Y TIPO DE CILINDROS: ----------
NUMBER AND TYPE OF CYLINDERS

MARCA O NOMBRE DE LOS FABRICANTES: ----------
BRAND OR NAME OF MANUFACTURERS

VELOCIDAD DE LA NAVE: ---------- CABALLOS DE FUERZA: ----------
SPEED OF THE VESSEL HORSE POWER

La presente Patente Provisional debe ser cancelada y sustituida por otra en los casos que se describen al reverso de este documento.

The present Provisional Registration Certificate International Service should be cancel and substituited by another one in cases that are described on the reverse of this document.

EXPEDIDA EL: 23 DE MARZO DE 1984 EN: NEW ORLEANS, LOUISIANA
ISSUED (DIA MES AÑO / MONTH DAY YEAR) (IN)

FIRMADA Y SELLADA POR EL SUSCRITO: CONSUL GENERAL
SIGNED AND SEALED BY THE UNDERSIGNED (TITULO DEL FUNCIONARIO / TITLE)

FECHA DE EXPIRACION: 22 DE SEPTIEMBRE DE 1984
VALID UNTIL (DIA MES AÑO / MONTH DAY YEAR)

CONSULADO GENERAL DE PANAMA

NERVA FORESTAL TORRIJOS
NOMBRE Y FIRMA DEL FUNCIONARIO
NAME AND SIGNATURE OF OFFICER

DISTINTIVO DE LLAMADA CALL LETTERS
HO-9733

REPUBLICA DE PANAMA
MINISTERIO DE HACIENDA Y TESORO
DIRECCION GENERAL DE CONSULAR Y DE NAVES
MARINA MERCANTE NACIONAL
SERVICIO INTERNACIONAL
PATENTE PROVISIONAL DE NAVEGACION

NUMERO OFICIAL REGISTRATION NO.
No. 6302-PEXT-2

Sitor No.42204

De acuerdo al cumplimiento de los requisitos estipulados en la Ley 8a. de 12 de enero de 1925, aprobados por la Diligencia de Matricula No. _____ de _____ de Marzo de 197 84, expedida por esta Oficina SE AUTORIZA Y CONCEDE a la nave cuyas características se detallan a continuación y la cual se dedicará exclusivamente al servicio de ABASTECIMIENTO, la presente PATENTE PROVISIONAL DE NAVEGACION para todos los fines respectivos que otorga el Registro de la Marina Mercante de la República de Panamá.

In accordance with the requirements established by the Ordinance No.8, dated the 12th of January 1925, the registration requested in Form No. _____, dated the _____ of _____ of 197_____, has been approved by this office. Therefore, the Panama Merchant Marine Registry hereby GRANTS AND AUTHORIZES this Provisional Registration of Navigation Certificate to the vessel, whose particulars are described below, and which will be used exclusively for _____

DATOS DE IDENTIFICACION DE LA NAVE
PARTICULARS OF THE VESSEL

NOMBRE DE LA NAVE: NAME OF THE VESSEL:	PROPIETARIO Y DOMICILIO: OWNER'S NAME AND ADDRESS:
"MCDERMOTT UTILITY BARGE NO.9"	MCDERMOTT INCORPORATED
NOMBRE ANTERIOR: PREVIOUS NAME:	REPRESENTANTE LEGAL Y DOMICILIO: NAME AND ADDRESS OF LEGAL REPRESENTATIVE:
"MCDERMOTT DERRICK BARGE NO.9"	DURLING & DURLING
NACIONALIDAD QUE RENUNCIA: PREVIOUS NATIONALITY:	RESPONSABLE DE LAS CUENTAS DE RADIO Y DOMICILIO: NAME AND ADDRESS OF COMPANY RESPONSABLE FOR RADIO EXPENSES:
NINGUNA	LOS DUEÑOS

CONSTRUIDO EN: BUILT IN:	FECHA: DATED:	CONSTRUCTORES: BUILDERS:
AVONDALE MARINE WAYS, INC.	1955	AVONDALE MARINE WAYS INC.

NUMERO DE: NUMBER OF:	MATERIAL DEL CASCO: MATERIAL OF THE HULL:	DIMENSIONES PRINCIPALES MAIN MEASUREMENTS	TONELAJE TONNAGE
CUBIERTAS DECKS ----	ACERO	ESLORA LENGTH 91.46 MTS.	BAJO CUBIERTA UNDER DECK
MASTILES MASTS ----		MANGA BREADTH 27.44 MTS.	BRUTO GROSS 4,416.89
CHIMENEAS FUNNEL		PUNTAL DEPTH 5.61 MTS.	NETO NET 4,416.00

SERVICIO A QUE SE DEDICA LA NAVE
KIND OF SERVICE GIVEN BY THE VESSEL

CARGA SECA DRY CARGO	CARGA LIQUIDA LIQUID CARGO	PASAJEROS PASSENGERS	MIXTO MIXED	PESCA DE FISHING OF	DE SERVICIO DE KIND OF SERVICE
---	----	---- 1A. CLASE 1ST. CLASS ------ 2A. CLASE 2ND. CLASS ----- 3A. CLASE 3RD. CLASS	---	------	ABASTECIMIENTO

SISTEMA DE PROPULSION
PROPULSION SYSTEM

CLASE Y NUMERO DE MAQUINAS O MOTORES: TYPE AND NUMBER OF ENGINES ---SIN PROPULSION-----

NUMERO Y TIPO DE CILINDROS: NUMBER AND TYPE OF CYLINDERS ----------

MARCA O NOMBRE DE LOS FABRICANTES: BRAND OR NAME OF MANUFACTURERS: ----------

VELOCIDAD DE LA NAVE: SPEED OF THE VESSEL: ---------- CABALLOS DE FUERZA: HORSE POWER: --------

La presente Patente Provisional debe ser cancelada y sustituida por otra en los casos que se describen al reverso de este documento.

The present Provisional Registration Certificate International Service should be cancel and substituted by another one in cases that are described on the reverse of this document.

EXPEDIDA EL: ISSUED. 23 DE MARZO DE 1984 EN: IN NEW ORLEANS, LOUISIANA
DIA MES AÑO MONTH DAY YEAR

FIRMADA Y SELLADA POR EL SUSCRITO: SIGNED AND SEALED BY THE UNDERSIGNED CONSUL GENERAL
TITULO DEL FUNCIONARIO TITLE

FECHA DE EXPIRACION: VALID UNTIL 22 DE SEPTIEMBRE DE 1984
DIA MES AÑO MONTH DAY YEAR

CONSULADO GENERAL DE PANAMA

NELVA FORESTAL TORRIJOS
NOMBRE Y FIRMA DEL FUNCIONARIO
NAME AND SIGNATURE OF OFFICER

Date: 5/27/85

Name: Gates Tide Former Name:

Builder: Halter Marine – (Lockport)
Hull No. 527 Official No.: 571978

Year Built: 1976 Home Port: Port Vila, Vanuatu Flag: Vanuatu

Size & Class: 180' x 38' 4-Ft. Crane Vessel Owner: Tidewater Navigators, Inc.

*DIMENSIONS

Tonnage, Gross:	285.78	Net: 194	
Length:	180	(54.9)	Ft(M)
Breadth:	38	(11.6)	Ft(M)
Depth:	14	(4.3)	Ft(M)
Draft, Light:	6.58	(2.00)	Ft(M)
Displ., Light:	715.1	(726.8)	LT(MT)
Loaded:	1568.0	(1593.6)	LT(MT)

*HULL CHARACTERISTICS

Open Deck Area, L:	92	(28.0)	Ft(M)
W:	29	(8.8)	Ft(M)
Ballast Capacity:	156,500	(592.4)	Gal(M^3)
Fresh Water Cap.:	63,226	(239.3)	Gal(M^3)
Fuel Capac., Ship:	72,076	(272.8)	Gal(M^3)
Day:	3,862	(14.6)	Gal(M^3)
De Cargo, Max:	417.0	423.8)	LT(MT)
	w/ crane stowed		

*OPERATIONAL DATA

Normal Fuel Cons: 125 (473)GPH(1/H)
Speed: 13.8 (12)MPH(Kts.)
Bollard Pull: 35 (36)LT(MT)Est.
USCG Certif: -
ABS Certif: +AMS, +A1 Towing Service
Other Certif: ABS Loadline
Suez Canal Tonnage
Std. No. Crew: 7

*LIVING SPACES

No. Rooms: 7 No. Bunks: 24
Cert. For: 24 Persons

Range: G.E. MR - 20A Water Cooler: Oasis

Refrig: Lemoine Ref. Size: 28 (.793) $Ft^3(M^3)$

Freezer: Lemoine Ref. Size: 14 (.396)$Ft^3(M^3)$

Walk-In Chill/Freezer: Tecumseh

Size: 300 (8.49)$Ft^3(M^3)$

A/C: Carrier Size: 10 ($1.2x10^5$)Ton(BTU/hr)

Heating: Electric Strip, 18 KW No.: 2

*LIFE SAVING EQUIPMENT

Floats: -
Inflatables: Three (3) - 20 man
Rescue Boat: One (1) - 14 Ft.
Ring Buoys: 6 - Life Jackets: 28
Extinguishers:CO_2: (7) - 15#

Foam:(3) - 2½ gal. Dry Chem.(1) - 2¾#
Others: E.P.I.R.B Five 1½" Firestations w/75' Hose & Nozzle Four Fire Axes

*ELECTRONIC/NAVIGATION EQUIPMENT

Call Sign: WYH 6513
Radar 1: Docca Model: RM-916
Radar 2: - Model: -
Emer. Radio: Drake Model: TRM
VHF Radio: Ensign Model: RT-457
SSB Radio: R.F. Comm. Model: RF-201M
Fathometer: Raytheon Model: DE 726A
Autopilot: Sperry Model: ST
Gyro: Sperry Model: SR-130
Loran: Model:
Other: Loudhailer: Realistic

*ELECTRICAL

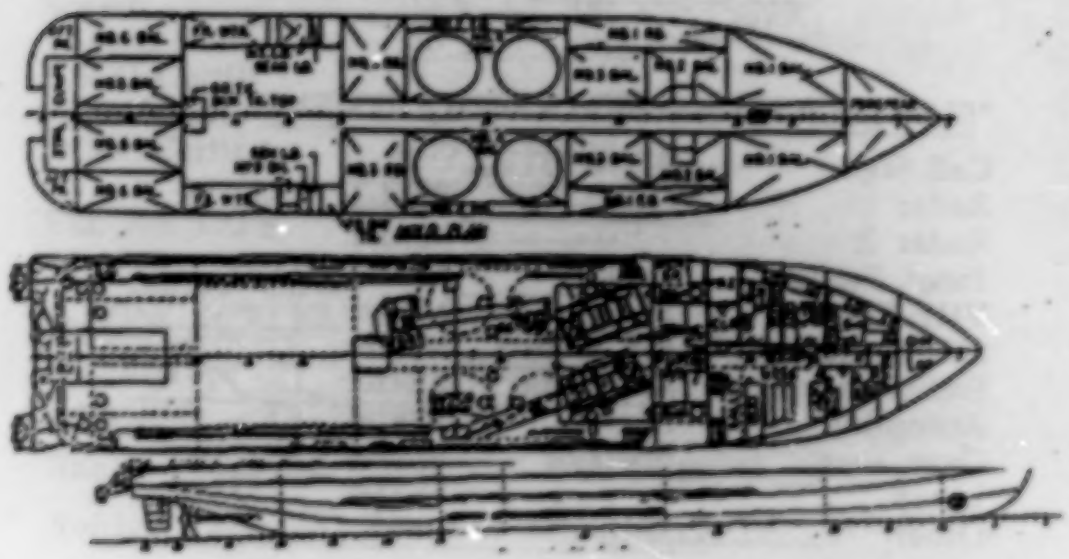
Generator: Delco Model: E6619
No: 2 KW: 150 RPM: 1200 Volt: 725/450
Hz: 60 Ph: 3 Eng: G.M. Model: 12V71

*WINDLASS

Mfg: HBL Model: XDW 1.25 EH-1
Chain Size: 1¼" Amt: 1260(P) 384
1080(S) (329)Ft(M)

Anchor: Denforth No.: 2

Weight: 2000 (908)Lb(Kg)



Date: 5/27/85

Name: Gates Tide

*MECHANICAL

Ballast/Bilge Pump: Barnes
Model: 251CU-1 Size: 3" x 3"
Cap. Tank-Ovbd: 300 (68.1)GPM(M^3/H) @
TDH: 120 (36.6)Ft(M)
Cap. Tank-Tank: - (-)GPM(M^3/H) @
TDH: - (-)Ft(M)

Cargo Pump: Barnes
Model: 4030 HCU Size: 4"x3"-7¹/₄"
Cap., Max: 400 (90.8)GPM(M^3/H) @
TDH: 195 (59.4)Ft(M)
Cap.m. Min: - (-)GPM(M^3/H) @

TDH: - (-)Ft(M)

Fire Pump: Barnes (combined w/B & B, abv)
Model: 251CU-1 Size: 3" x 3"
Cap. Max: 300 (68.1)GPM(M^3/H) @
TDH: 120 (36.6)Ft(M)

Cargo Fuel Pump: Barnes
Model: 4030 HCU Size: 4"x3"-7¹/₄"
Cap., Max: 500 (113.6)GPM(M^3/H) @
TDH: 120 (36.6)Ft(M)
Cap.m. Min: - (-)GPM(M^3/H) @
TDH: - (-)Ft(M)

Fuel Transfer Pump: Viking Size: HL195
Fuel Meter: Brooks Model: B82D
Orbitrol
Steering: Electro-Hydraulic Model: Skipper
Air Comp: Dresser Model: 500 No. 2
Capacity: 23.6 (40.1)CFM(M^3/H @
225 (15.3)PSI(Atm)

Propeller: 4 - blade Material: Brz
Diam: 90 (2286.0)In(Mm)
Pitch: 81 (2057.0)In(Mm)
Shafting:Diam: 8.75 (222.3)In(Mm)

Other: Two (2) - 12" diam. Vertically actuated tow pins by Western Machine Works 250 amp Lincoln welding machine

*PROPULSION

Main Eng: EMD Model: 16-567-BC
Cont. HP: 1600 (1622.4)E(M) @:800RPM

Max. HP: 1760 (1784.6)E(M) @:835RPM
Total Cont. HP: 3200 (3244.8)E(M)
Total Max. HP: 3520 (3569.3)E(M)
Reduction Gear: Reintjes Model: WGV 481
Red., High: 3/443:1 Red., Low: -

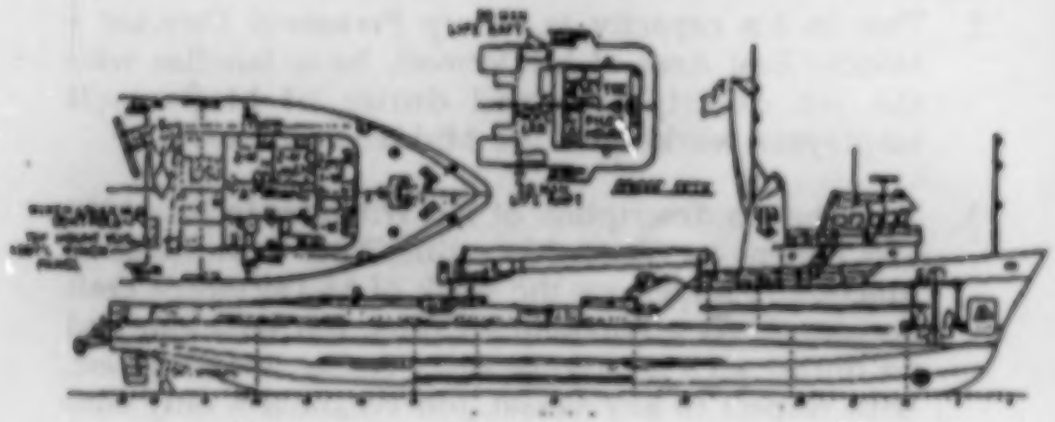
*4 POINT MOORING SYSTEM

Winch: Smatco Model: 66-DAW 200
SL Pull: 112.6 (114.4)LT(MT)
Wire Size: 1¼ (3.175)In(CM)
Drum Cap: 2500 (762.3)Ft(M)
(each drum)
Winch: Smatco Model: 55-DAW 170
SL Pull: 67.0 (68.0)LT(MT)
Wire Size: 1¼ (3.175)In(CM)
Drum Cap: 2500 (762.5)Ft(M)
(each drum)
Anchor: Baldt No.: 4
Weight: 11200 (5084.8)Lb(Kg)
Anchor: - No: -
Weight: - (-)Lb(Kg)
Stern Roller: 54"x8' (tapered ends)

*SPECIAL EQUIPMENT

Capstan: - Model: -
SL Pull: - -)LT(MT)
Tugger: - Model: -
SL Pull: - -)LT(MT)

Bow Thruster: M & T Model: BT 300
Thrust: 4620 (2097.5)Lb(Kg)
Eng: GM Model: 6-71 HP: 200 (202.8)E(M)
Bulk Mud: Smatco No. Tanks: 4
Tank Capacity: 900 (25.5)Ft³(M³)
Discharge Rate: 20 (33.7)CFM(M³/H)
Air Comp: Gardner-Denver Model: WAQ
Engine: GM Model: 4-71
Liquid Mud: Capacity: - (-)Bbls( )
Discharge Rate: - (-)B/H( )
Crane: Nautilus Model: 25-2-70
Lift: 22.3 (22.6)LT(MT)
@ 10(3.05)Ft(M)Radius
2.5 (6.9)LT(MT) @ 70(21.33)Ft(M)Radius



United Arab Emirates)
District of the Consular)
Section of the Consulate)
General of the United) SS:
States of America at)
at Dubai)

AFFIDAVIT

DANIEL P. LEDET, having been duly sworn according to the law, deposes and says:

1. That he is the Group Personnel Director – Middle East Area of McDermott International, Inc. ("McDermott").

2. That in his capacity as Group Personnel Director – Middle East Area of McDermott, he is familiar with the job descriptions and duties of McDermott employees working in the Middle East Area.

3. That the job description of Jon Wilander in July 1983 was Foreman – Crafts (Core title 7640) with the basic function to supervise the work of McDermott's craft personnel. As a Foreman – Crafts, Jon Wilander had no duties such as navigation, steering, mooring, etc. with respect to any vessel. Jon Wilander's only connection to any vessel was as a passenger to the jobsite or using the vessel as a work platform.

4. The majority of Jon Wilander's work while employed with McDermott International, Inc. was a deck sections, jackets, compressor stations etc., which are all part of a 'Fixed Platform'.

/s/ D P Ledet
DANIEL P. LEDET

Sworn to and subscribed before me this 9th day of September, 1986.

/s/ Michael J. Varga
Michael J. Varga
NOTARY PUBLIC
Vice-Consul of the United States
of America

DEFENDANT'S EXHIBIT 1

STATE OF LOUISIANA

PARISH OF Beauregard

AFFIDAVIT

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the Parish of Beauregard, State of Louisiana, personally came and appeared JON C. WILANDER, who being duly sworn did depose and say:

That he has reviewed that certain affidavit made by Daniel P. LeDet on the 9th day of September, 1986 and states that Mr. LeDet may be familiar with what the book claims the duties of Jon Wilander were, but that Mr. LeDet can not have personal knowledge of the actual job duties performed by Jon Wilander because he could not have signed the affidavit in truth on September 9, 1986 if he actually knew what Mr. Wilander's duties were at the time of the accident.

That Jon C. Wilander aided in the navigation of the M/V GATES TIDES and on many occasions did the actual steering and driving of the vessel.

That Jon Wilander and his crew aided in the mooring and tying of lines on the vessel each and every time the vessel encountered bad weather.

That Jon Wilander ate, slept and actually lived aboard the M/V GATES TIDES during the period of employment with McDermott.

That without the aid of the M/V GATES TIDES, Mr. Wilander would not have been able to perform his duties as Crafts foreman.

That all equipment necessary to do the required work was stationary aboard the M/V GATES TIDES. That Mr. Wilander supervised work aboard the M/V GATES TIDES.

That all sources of power utilized in Mr. Wilander's jobs were from the M/V GATES TIDES. This includes water, air and electricity.

That Jon C. Wilander was issued a seaman's card by McDermott and it was his understanding that McDermott at always considered him to be a seamen [sic].

/s/ Jon C. Wilander
JON C. WILANDER

SWORN TO AND SUBSCRIBED before me this 13th day of November, 1986.

/s/ Teri Workman
NOTARY PUBLIC

TIDEWATER
LEGAL DEPARTMENT

February 1, 1988

Mr. Edmund E. Woodley
Woodley, Barnett, Williams, Fenet,
Palmer & Pitre
Post Office Drawer EE
Lake Charles, Louisiana 70602-3731

Re: Jon C. Wilander vs. McDermott International, Inc.

Dear Mr. Woodley:

In reply to your January 20, 1988 correspondence, and as confirmed in my telephone conversation of January 28, 1988 with you and Robin Anderson, on July 4, 1983 the M/V GATES TIDE was documented under the laws of the United States. The registry of the vessel however was changed to that of the Republic of Vanuatu on March 5, 1984. Enclosed for your information are copies of the vessel's documentation as of December 1982, 1983 and March of 1984 confirming the foregoing.

I trust that this is responsive to your inquiry, but if for any reason you care to further discuss the matter please do not hesitate to contact me.

Sincerely,

TIDEWATER INC.

/s/ James C. Wilbert
James C. Wilbert

JCW/cp
encls.

TIDEWATER INC.
1440 Canal Street
New Orleans, Louisiana 70112
Telephone: (504) 568-1010
Facsmile: (504) 566-4582
Telex: 584216 Tidewater NLN
460050 or 460051 TIDE UI

Gates Tide - O. N. 571978
name of vessel

Officer in Charge
Marine Inspection
F. Edward Hebert 1
600 South St., Rm.
New Orleans, La. 7(

Received from Documentation
12/6/83 - Blue Coded

TIDEWATER NAV IGATORS, INC.
P.O. BOX 61117
NEW ORLEANS, LA 70161

ATTN: LUCILLE HUDSON

171

ATTENTION VESSEL OWNER:

PLACE THE ATTACHED DECAL DIRECTLY OVER THE DECAL PRESENTLY ON YOUR CERTIFICATE OF DOCUMENTATION AS SHOWN BELOW.

10. PORT OF ISSUANCE	11. DATE OF ISSUANCE	
12. SIGNATURE & SEAL	CG-1280A 10 DATE SIGNATURE	DATE SIGNATURE

*INDICATES CHANGE IN ITEM, NATURE OF WHICH IS REFLECTED ON REVERSE OF DOCUMENT.

PREFERRED MORTGAGE ENDORSEMENTS

MORTGAGE ENDORSEMENT		MORTGAGE AMENDMENTS
INSTRUMENT PM _____, INST. _____ MORTGAGOR	INSTRUMENT PM _____, INST. _____ MORTGAGOR	1. INSTRUMENT AMENDED PM _____, INST. _____ CHANGE

The Republic of Vanuatu

Ministry of Finance
Port Vila, Vanuatu

Certificate Number
84-8-NYC

Provisional Certificate of Registry

OFFICIAL NUMBER	CALL LETTERS	NAME OF VESSEL	SERVICE	HOME PORT
130	YJWD5	GATES TIDE	OIL & MINERAL SERVICE	PORT VILA

THIS IS TO CERTIFY THAT pursuant to the provisions of the Maritime Law of Vanuatu ..... having taken and subscribed the oath required by law and having sworn that

Name	Residence	Citizenship	Proportion
TIDEWATER NAVIGATORS, INC.	P.O. BOX 61117 NEW ORLEANS, LOUISIANA 70161	U.S.A.	100%

is (are) the sole owner(s) of the herein named and described vessel

GENERAL PARTICULARS

DATE PURCHASED	PLACE OF PURCHASE	FORMER NAME	CLASSED BY	DATE REGISTERED
			ABS	MARCH 5, 1984

BUILT BY	YEAR BUILT	PLACE BUILT
HALTER MARINE SERVICES, INC.	1976	LOCKPORT, LOUISIANA

CONVERTED (Altered) BY	YEAR CONVERTED	PLACE CONVERTED

NUMBER OF MASTS	NUMBER OF DECKS	MATERIAL	TYPE OF STEM	TYPE OF STERN	HOW PROPELLED
TWO	ONE	STEEL	RAKED	SQUARE	MOTOR TWIN SCREW

PARTICULARS OF PROPELLING ENGINES

NUMBER AND TYPE OF ENGINES	HORSEPOWER	DATE MADE	NAME OF MANUFACTURER
TWO EMD MODEL 16-567-BC	3200	1976	ELECTRO-MOTIVE DIVISION OF GENERAL MOTORS

REGISTER DIMENSIONS

LENGTH	BREADTH	DEPTH	HEIGHT
166.00	38.1	13.5	

PARTICULARS OF TONNAGE*

SINGLE TONNAGE VESSEL	GROSS TONS	NET TONS	DUAL TONNAGE VESSELS	GROSS TONS	NET TONS
Tonnage mark not fixed and not required	285.78	194.00	Tonnage mark fixed and submerged		
Tonnage mark fixed and level with uppermost line of load line grid			Tonnage mark fixed and NOT submerged		

and whereas the Maritime Administrator, on behalf of the Government of the Republic of Vanuatu has approved the application of the aforesaid owner for registration of the vessel and whereas the owner has complied with the requirements for registration, the vessel is therefore duly registered under the Laws and Flag of the Republic of Vanuatu.

THIS PROVISIONAL CERTIFICATE OF REGISTRY AND ALL RIGHTS AND PRIVILEGES ACCORDED THEREUNDER, UNLESS EXTENDED BY THE COMMISSIONER OR A DEPUTY COMMISSIONER OF MARITIME AFFAIRS, SHALL EXPIRE ON THE 4TH DAY OF MARCH 19 85 .

ISSUED by Authority of the Government of The Republic of Vanuatu under my hand and seal at PORT OF NEW YORK this 5TH day of MARCH 19 84

The Commissioner of Maritime Affairs
REPUBLIC OF VANUATU

By: .....

.....

*Note:
In the case of a vessel fitted with a Tonnage Mark and having two gross and net tonnages, the lesser tonnages will be applicable when the Tonnage Mark is NOT submerged.

Form 6-1

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-1270 (REV. 5-82)

CERTIFICATE OF DOCUMENTATION

OMB APPROVED
2115-0110

1. VESSEL NAME
GATES TIDE

14. PROPULSION
YES

15. HULL MATERIAL
STEEL

2. OFFICIAL NUMBER
571978

3. TONNAGE
GROSS 285 NET 194 L. B. D. 166.0 38.1 13.5

16. TRADE ENDORSEMENTS. DO NOT INSERT ANY TRADES FROM WHICH VESSEL IS RESTRICTED. SEE BLOCK 8.

4. HOME PORT
NEW ORLEANS, LA.

5. BUILD: PLACE(S)
Lockport, La.

YEAR
1976

6. OWNER
TIDEWATER NAVIGATORS, INC.

7. OWNER'S ADDRESS
P. O. Box 61117
New ORleans, La. 70161

8. RESTRICTIONS
NONE

9. ENTITLEMENTS
NONE

10. PORT OF ISSUANCE
NEW ORLEANS, LA.

11. DATE OF ISSUANCE
15 December 1982

12. SIGNATURE & SEAL
T. P. ZACHRY

12
571978

THIS VESSEL IS PRESENTLY DOCUMENTED FOR:
REGISTRY
COASTWISE
DATE 15 December 1982
SIGNATURE T P Zachry

THIS VESSEL IS PRESENTLY DOCUMENTED FOR:
DATE
SIGNATURE

THIS VESSEL IS PRESENTLY DOCUMENTED FOR:
DATE
SIGNATURE

THIS VESSEL IS PRESENTLY DOCUMENTED FOR:
DATE
SIGNATURE

THIS VESSEL IS PRESENTLY DOCUMENTED FOR:
DATE
SIGNATURE

*INDICATES CHANGE IN ITEM, NATURE OF WHICH IS REFLECTED ON REVERSE OF DOCUMENT.

PREFERRED MORTGAGE ENDORSEMENTS

MORTGAGE ENDORSEMENT

INSTRUMENT
PM _____, INST. _____
MORTGAGOR

MORTGAGEE

AMOUNT

MATURITY DATE

DATE AND TIME OF ENDORSEMENT

SEPARATE DISCHARGE (IF ANY)

SIGNATURE AND SEAL

PORT

SATISFACTION
SATISFIED BY PM _____
INST. _____, FILED AT

DATE OF ENTRY

INSTRUMENT
PM _____, INST. _____
MORTGAGOR

MORTGAGEE

AMOUNT

MATURITY DATE

DATE AND TIME OF ENDORSEMENT

SEPARATE DISCHARGE (IF ANY)

SIGNATURE AND SEAL

PORT

SATISFACTION
SATISFIED BY PM _____
INST. _____, FILED AT

DATE OF ENTRY

MORTGAGE AMENDMENTS

1. INSTRUMENT AMENDED
PM _____, INST. _____
CHANGE

DATE AND TIME OF ENDORSEMENT

SIGNATURE AND SEAL

PORT

2. INSTRUMENT AMENDED
PM _____, INST. _____
CHANGE

DATE AND TIME OF ENDORSEMENT

SIGNATURE AND SEAL

PORT

INSTRUMENT AMENDED
PM _____, INST. _____
CHANGE

DATE AND TIME OF ENDORSEMENT

SIGNATURE AND SEAL

DEFENDANT'S EXHIBIT 11

JON WILANDER
HOURLY U.S. EXPATS
TOTAL NUMBER ON CONTRACT IN M.E.A.

Date	Number
June 1982	185
June 1983	188
June 1984	125
June 1985	91
June 1986	68
June 1987	9
December 1987	11

PAINT FOREMAN IN M.E.A.

Date	Name	Original Hire Date	C.C. Last Contract
June 1982	Jon Wilander	4-01-82	10-31-83
	W. Bertrand	5-03-82	4-19-85
June 1983	Jon Wilander		
	W. Bertrand		
June 1984	C. Skiba	(Hired in Dubai) 5-18-82	9-13-84
June 1985	W. Whitchard	2-25-60	3-18-86
June 1986	R. D. Struck	5-08-71	10-01-86
June 1987	None		
December 1987	None		

(AEP105) PAY STATEMENT PERIOD ENDING 07/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 5

TYPE	HRS/DAYS	PAY		
REGULAR PAY	68.00	737.80		
OVERTIME PAY	28.00	151.90		
EXPAT. PREMIUM		134.15		
** GROSS PAY			1023.85	GROSS
LESS DEDUCTIONS				
R.A.F. DEDUCTION		175.00		
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
*** NET PAY			814.25	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON C WILANDER	395316	2510	400.00		
WILANDER, JON C	395317	2510	414.25		
**** TOTAL CHECK AMOUNT				814.25	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
.41	184.45	175.00	THIS PERIOD
4.82	1917.74	175.00 *	THIS CONTRACT

* STILL TO BE DEDUCTED

(AEP105) PAY STATEMENT PERIOD ENDING 06/30/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 14

TYPE	HRS/DAYS	PAY		
REGULAR PAY	72.00	781.20		
OVERTIME PAY	24.00	130.20		
EXPAT. PREMIUM		375.65		
TIME OFF PAY	64.00	694.40		
** GROSS PAY			1981.45	GROSS
LESS DEDUCTIONS				
R.A.F. DEDUCTION		175.00		
*** NET PAY			1806.45	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON C WILANDER	392604	2510	195.04		
JON C WILANDER	392986	2560	204.96		
WILANDER, JON C	392987	2560	1406.45		
**** TOTAL CHECK AMOUNT				1806.45	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.16	368.90	175.00	THIS PERIOD
4.41	1733.29	350.00 *	THIS CONTRACT

* STILL TO BE DEDUCTED

(AEP105) PAY STATEMENT PERIOD ENDING 06/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DAYS	PAY		
REGULAR PAY	164.00	1779.40		
OVERTIME PAY	68.00	368.90		
EXPAT. PREMIUM		402.50		
TIME OFF PAY	24.00	260.40		
** GROSS PAY			2811.20	GROSS
LESS DEDUCTIONS				
GROUP INSURANCE		12.20		
ACCIDENT INSURANCE		22.40		
R.A.F. DEDUCTION		175.00		
*** NET PAY			2601.60	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON C WILANDER	391083	2560	400.00	
WILANDER, JON C	391084	2560	2201.60	
**** TOTAL CHECK AMOUNT			2601.60	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	509.95	175.00	THIS PERIOD
3.25	1364.39	700.00 *	THIS CONTRACT

* STILL TO BE DEDUCTED

177

(AEP105) PAY STATEMENT PERIOD ENDING 05/31/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 16

TYPE	HRS/DAYS	PAY		
REGULAR PAY	208.00	2256.80		
OVERTIME PAY	80.00	434.00		
EXPAT. PREMIUM		402.50		
** GROSS PAY			3093.30	GROSS
LESS DEDUCTIONS				
R.A.F. DEDUCTION		175.00		
*** NET PAY			2918.30	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
WILANDER, JON C	387358	2560	2918.30	
**** TOTAL CHECK AMOUNT			2918.30	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	564.20	175.00	THIS PERIOD
2.00	854.44	875.00 *	THIS CONTRACT

* STILL TO BE DEDUCTED

178

(AEP105) PAY STATEMENT PERIOD ENDING 05/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 9

TYPE	HRS/DAYS	PAY		
REGULAR PAY	91.00	987.35		
OVERTIME PAY	35.00	189.87		
EXPAT. PREMIUM		241.50		
JOB TRAVEL PAY	16.00	173.60		
C.C. TRAVEL/PROCESS TIME	8.00	86.80		
** GROSS PAY			1679.12	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
*** NET PAY			1644.52	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
WILANDER, JON C	386381	2560	1644.52		
**** TOTAL CHECK AMOUNT				1644.52	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
.75	290.24	THIS PERIOD
.75	290.24	THIS CONTRACT

179

(AEP105) PAY STATEMENT PERIOD ENDING 04/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 3

TYPE	HRS/DAYS	PAY		
REGULAR PAY	24.00	260.40		
EXPAT. PREMIUM		80.50		
** GROSS PAY			340.90	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
CONT COMP PAID		306.30		
*** NET PAY			.00	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
**** TOTAL CHECK AMOUNT				.00	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
.25	65.10	THIS PERIOD
.00	.00	THIS CONTRACT

180

JON C. WILANDER – 04612

Contract Completion thru April 3rd, 1983

216	hours	Regular Pay March 16-31 & April 1-3, 1983	$ 2,343.60
64	hours	Overtime Pay	347.20
		Expat Premium	483.00
399.92	hours	T.O.N.T.	4,339.13
16.00	hours	Contract Completion Travel	173.60
		Group Insurance for April & May 1983	(24.40)
		Accident Insurance for April & May 1983	(44.80)
			$ 7,617.33
		Contract Completion Bonus	$14,112.91
29.70	days	Vacation Pay	2,577.96
		Relocation Refund	900.00
		Time Off Airfare Credit	1,124.65
			$26,332.85

Paid on check Nos. 239000 = $ 2,000.00
239001 = $12,166.43
239002 = $12,166.42

181

JON C. WILANDER – NO. 04612
RETROACTIVE ADJUSTMENT FROM
04/01/82 THRU 07/04/83 AND
MEDICAL CONTRACT COMPLETION THRU JULY 4TH 1983

DIFFERENCE ON OLD CONTRACT (1982-1983)

4803.00 Hrs.	Regular April 1, 1983 to April 3, 1983	@ 0.50 P.H.	$2,401.50		
1899.00 Hrs.	O/T " " " "	@ 0.25 P.H.	474.75		
	Expat. Premium	@40.00 P.M.	475.25		
8.00 Hrs.	Process time	@ 0.50 P.H.	4.00		
16.00 Hrs.	C/Completion travel	@ 0.50 P.H.	8.00		
399.92 Hrs.	TONT pay	@ 0.50 P.H.	199.96		
29.70 Days	Vacation pay	@ 0.50 P.H.	118.80		
	C/Completion bonus		650.37	$4,332.63	

DIFFERENCE ON NEW CONTRACT MAY TO JULY 1983

707.00 Hrs.	Regular May 7 thru July 4, 1983	@ 0.50 P.H.	$353.50	
235.00 Hrs.	O/T " " " "	@ 0.25 P.H.	58.75	
	Expat. Premium	@40.00 P.M.	77.33	
8.00 Hrs.	Process time	@ 0.50 P.H.	4.00	$ 493.58
58.00 Hrs.	TONT			658.30
	C/Completion bonus			2,170.69
4.82 Days	Vacation pay			437.66
	Relocation refund			700.00
				$8,792.86

Paid on check No. 239748

182

(AEP105) PAY STATEMENT PERIOD ENDING 03/31/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 16

TYPE	HRS/DAYS	PAY		
REGULAR PAY	192.00	2083.20		
OVERTIME PAY	64.00	347.20		
EXPAT. PREMIUM		402.50		
** GROSS PAY			2832.90	GROSS
LESS DEDUCTIONS				
CONT COMP PAID		2832.90		
*** NET PAY			.00	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
**** TOTAL CHECK AMOUNT			.00	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	520.80	THIS PERIOD
29.45	12963.03	THIS CONTRACT

(AEP105) PAY STATEMENT PERIOD ENDING 03/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DAYS	PAY		
REGULAR PAY	180.00	1953.00		
OVERTIME PAY	60.00	325.50		
EXPAT. PREMIUM		402.50		
** GROSS PAY			2681.00	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
*** NET PAY			2646.40	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	377195	2560	400.00	
WILANDER JON C	377196	2560	2246.40	
**** TOTAL CHECK AMOUNT			2646.40	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	488.25	THIS PERIOD
28.20	12442.23	THIS CONTRACT

(AEP105) PAY STATEMENT PERIOD ENDING 02/28/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 13

TYPE	HRS/DAYS	PAY		
REGULAR PAY	156.00	1692.60		
OVERTIME PAY	52.00	282.10		
EXPAT. PREMIUM		402.50		
** GROSS PAY			2377.20	GROSS
LESS DEDUCTIONS				
*** NET PAY			2377.20	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	375101	2560	400.00		
WILANDER JON C	375102	2560	1977.20		
**** TOTAL CHECK AMOUNT				2377.20	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	423.15	THIS PERIOD
26.95	11953.98	THIS CONTRACT

185

(AEP105) PAY STATEMENT PERIOD ENDING 02/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DAYS	PAY		
REGULAR PAY	199.00	2159.15		
OVERTIME PAY	79.00	428.57		
EXPAT. PREMIUM		402.50		
** GROSS PAY			2990.22	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
*** NET PAY			2955.62	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	373415	2560	400.00		
WILANDER JON C	373416	2560	2555.62		
**** TOTAL CHECK AMOUNT				2955.62	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	539.79	THIS PERIOD
25.70	11530.83	THIS CONTRACT

186

(AEP105) PAY STATEMENT PERIOD ENDING 01/31/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 20

TYPE	HRS/DAYS	PAY		
REGULAR PAY	247.00	2679.95		
OVERTIME PAY	87.00	471.97		
EXPAT. PREMIUM		503.13		
** GROSS PAY			3655.05	GROSS
LESS DEDUCTIONS				
*** NET PAY			3655.05	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	370550	2560	400.00	
WILANDER JON C	370551	2560	3255.05	
**** TOTAL CHECK AMOUNT				3655.05

CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.56	669.99	THIS PERIOD
24.45	10991.04	THIS CONTRACT

187

(AEP105) PAY STATEMENT PERIOD ENDING 01/15/83

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 11

TYPE	HRS/DAYS	PAY		
REGULAR PAY	159.00	1725.15		
OVERTIME PAY	71.00	385.17		
EXPAT. PREMIUM		295.15		
** GROSS PAY			2405.47	GROSS
LESS DEDUCTIONS				
GROUP INSURANCE		12.20		
ACCIDENT INSURANCE		22.40		
*** NET PAY			2370.87	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	369795	2560	400.00	
WILANDER JON C	369796	2560	1970.87	
**** TOTAL CHECK AMOUNT				2370.87 CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
.91	431.29	THIS PERIOD
22.89	10321.05	THIS CONTRACT

188

(AEP105) PAY STATEMENT PERIOD ENDING 12/31/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 16

TYPE	HRS/DAYS	PAY		
REGULAR PAY	205.00	2224.25		
OVERTIME PAY	77.00	417.72		
EXPAT. PREMIUM		402.50		
** GROSS PAY			3044.47	GROSS
LESS DEDUCTIONS				
*** NET PAY			3044.47	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	366584	2560	400.00		
WILANDER JON C	366585	2560	2644.47		
**** TOTAL CHECK AMOUNT				3044.47	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	556.06	THIS PERIOD
21.98	9889.76	THIS CONTRACT

189

(AEP105) PAY STATEMENT PERIOD ENDING 12/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	44.00	477.40		
OVERTIME PAY	12.00	65.10		
EXPAT.PREMIUM		402.50		
TIME OFF PAY	88.00	954.80		
**GROSS PAY			1899.80	GROSS
LESS DEDUCTIONS				
GROUP INSURANCE		12.20		
ACCIDENT INSURANCE		22.40		
***NET PAY			1865.20	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	365765	2560	400.00		
WILANDER JON C	365766	2560	1465.20		
****TOTAL CHECK AMOUNT				1865.20	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	358.05	THIS PERIOD
20.73	9333.70	THIS CONTRACT

190

(AEP105) PAY STATEMENT PERIOD ENDING 11/30/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	192.00	2083.20		
OVERTIME PAY	72.00	390.60		
EXPAT.PREMIUM		402.50		
**GROSS PAY			2876.30	GROSS
LESS DEDUCTIONS				
***NET PAY			2876.30	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	362460	2560	400.00		
WILANDER JON C	362461	2560	2476.30		
****TOTAL CHECK AMOUNT				2876.30	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS		
1.25	520.80	THIS PERIOD	
19.48	8975.65	THIS CONTRACT	

191

(AEP105) PAY STATEMENT PERIOD ENDING 11/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	165.00	1790.25		
OVERTIME PAY	45.00	244.12		
EXPAT.PREMIUM		402.50		
**GROSS PAY			2436.87	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
TIME OF PER DCEM CR	200.00-			
***NET PAY			2602.27	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	361593	2560	400.00		
WILANDER JON C	361594	2560	2202.27		
****TOTAL CHECK AMOUNT				2602.27	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS		
1.25	447.56	THIS PERIOD	
18.23	8454.85	THIS CONTRACT	

192

(AEP105) PAY STATEMENT PERIOD ENDING 10/31/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 16

TYPE	HRS/DYS	PAY		
REGULAR PAY	212.00	2300.20		
OVERTIME PAY	84.00	455.70		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3158.40	GROSS
LESS DEDUCTIONS				
***NET PAY			3158.40	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	358332	2560	400.00		
WILANDER JON C	358333	2560	2758.40		
****TOTAL CHECK AMOUNT				3158.40	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	575.05	THIS PERIOD
16.98	8007.29	THIS CONTRACT

193

(AEP105) PAY STATEMENT PERIOD ENDING 10/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	176.00	1909.30		
OVERTIME PAY	72.00	390.60		
EXPAT.PREMIUM		402.50		
JOB TRAVEL PAY	8.00	86.80		
MISA/WAIT FOR TRANS TIME	24.00	260.40		
**GROSS PAY			3049.90	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
***NET PAY			3015.30	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	356506	2530	388.62		
JON WILANDER	356695	2560	11.38		
WILANDER JON C	356696	2560	2615.30		
****TOTAL CHECK AMOUNT				3015.30	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	564.20	THIS PERIOD
15.73	7432.24	THIS CONTRACT

194

(AEP105) PAY STATEMENT PERIOD ENDING 09/30/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	271.00	2940.35		
OVERTIME PAY	151.00	819.17		
EXPAT.PREMIUM		402.50		
**GROSS PAY			4162.02	GROSS
LESS DEDUCTIONS				
**NET PAY			4162.02	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	352857	2530	400.00	
WILANDER JON C	352858	2530	3762.02	
****TOTAL CHECK AMOUNT			4162.02	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.25	735.09	THIS PERIOD
14.48	6868.04	THIS CONTRACT

195

(AEP105) PAY STATEMENT PERIOD ENDING 09/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 19

TYPE	HRS/DYS	PAY		
REGULAR PAY	325.00	3526.25		
OVERTIME PAY	173.00	938.52		
EXPAT.PREMIUM		509.85		
**GROSS PAY			4974.62	GROSS
LESS DEDUCTIONS				
GROUP INSURANCE		12.20		
ACCIDENT INSURANCE		22.40		
***NET PAY			4940.02	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	351998	2530	400.00	
WILANDER JON C	351999	2530	4540.02	
****TOTAL CHECK AMOUNT			4940.02	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	
1.59	881.56	THIS PERIOD
13.23	6132.95	THIS CONTRACT

196

(AEP105) PAY STATEMENT PERIOD ENDING 08/31/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 5

TYPE	HRS/DYS	PAY		
REGULAR PAY	44.00	477.40		
OVERTIME PAY	20.00	108.50		
EXPAT.PREMIUM		125.78		
TIME OFF PAY	16.00	173.60		
**GROSS PAY			885.28	GROSS
LESS DEDUCTIONS				
***NET PAY			885.28	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	348529	2530	400.00		
WILANDER JON C	348530	2530	278.30		
WILANDER JON C	348691	2560	206.98		
****TOTAL CHECK AMOUNT				885.28	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS		
.39	162.75	THIS PERIOD	
11.64	5251.39	THIS CONTRACT	

197

(AEP105) PAY STATEMENT PERIOD ENDING 08/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
EXPAT.PREMIUM		402.50		
TIME OFF PAY	120.00	1302.00		
**GROSS PAY			1704.50	GROSS
LESS DEDUCTIONS				
GROUP INSURANCE		12.20		
ACCIDENT INSURANCE		22.40		
***NET PAY			1669.90	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	347086	2560	400.00		
WILANDER JON C	347087	2560	1269.90		
****TOTAL CHECK AMOUNT				1669.90	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS		
1.25	325.50	THIS PERIOD	
11.25	5088.64	THIS CONTRACT	

198

(AEP105) PAY STATEMENT PERIOD ENDING 07/31/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 16

TYPE	HRS/DYS	PAY		
REGULAR PAY	17.00	184.45		
OVERTIME PAY	9.00	48.82		
EXPAT.PREMIUM		402.50		
TIME OFF PAY	104.00	1128.40		
JOB TRAVEL PAY	8.00	86.80		
MISA/WAIT FOR TRANS TIME	8.00	86.80		
**GROSS PAY			1937.77	GROSS
LESS DEDUCTIONS				
***NET PAY			1937.77	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	342849	2560	400.00		
WILANDER JON C	342850	2560	1537.77		
****TOTAL CHECK AMOUNT				1937.77	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS		
1.25	371.61	THIS PERIOD	
10.00	4763.14	THIS CONTRACT	

199

(AEP105) PAY STATEMENT PERIOD ENDING 07/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	249.00	2701.65		
OVERTIME PAY	129.00	699.82		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3803.97	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
***NET PAY			3769.37	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT		
JON WILANDER	341433	2560	400.00		
WILANDER JON C	341434	2560	3369.37		
****TOTAL CHECK AMOUNT				3769.37	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUSL		
1.25	675.41	THIS PERIOD	
8.75	4391.53	THIS CONTRACT	

200

(AEP105) PAY STATEMENT PERIOD ENDING 06/30/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	249.00	2701.65		
OVERTIME PAY	129.00	699.82		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3803.97	GROSS
LESS DEDUCTIONS				
R.A.F. DEDUCTION		150.00		
***NET PAY			3653.97	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	337241	2560	400.00	
WILANDER JON C	337242	2560	3253.97	
****TOTAL CHECK AMOUNT			3653.97	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	675.41	150.00	THIS PERIOD
7.50	3716.12	.00	THIS CONTRACT

201

(AEP105) PAY STATEMENT PERIOD ENDING 06/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	228.00	2473.80		
OVERTIME PAY	108.00	585.90		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3462.20	GROSS
LESS DEDUCTIONS				
ACCIDENT INSURANCE		22.40		
R.A.F. DEDUCTION		150.00		
GROUP INSURANCE		12.20		
***NET PAY			3277.60	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	336186	2560	400.00	
WILANDER JON C	336187	2560	2877.60	
****TOTAL CHECK AMOUNT			3277.60	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	618.45	150.00	THIS PERIOD
6.25	3040.71	150.00*	THIS CONTRACT

*STILL TO BE DEDUCTED

202

(AEP105) PAY STATEMENT PERIOD ENDING 05/31/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 16

TYPE	HRS/DYS	PAY		
REGULAR PAY	238.00	2582.30		
OVERTIME PAY	110.00	596.75		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3581.55	GROSS
LESS DEDUCTIONS				
RED WING COVERALL		21.80		
R.A.F. DEDUCTION		150.00		
***NET PAY			3409.75	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	331732	2560	400.00	
WILANDER JON C	331733	2560	3009.75	
****TOTAL CHECK AMOUNT			3409.75	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	645.58	150.00	THIS PERIOD
5.00	2422.26	300.00*	THIS CONTRACT

*STILL TO BE DEDUCTED

203

(AEP105) PAY STATEMENT PERIOD ENDING 05/15/82

EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	225.00	2441.25		
OVERTIME PAY	105.00	569.62		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3413.37	GROSS
LESS DEDUCTIONS				
TVL EXPENSES		51.00-		
ACCIDENT INSURANCE		22.40		
GROUP INSURANCE		12.20		
R.A.F. DEDUCTION		150.00		
***NET PAY			3279.77	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	330670	2560	400.00	
WILANDER JON C	330671	2560	2879.77	
****TOTAL CHECK AMOUNT			3279.77	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	610.31	150.00	THIS PERIOD
3.75	1776.68	450.00*	THIS CONTRACT

*STILL TO BE DEDUCTED

204

(AEP105) PAY STATEMENT PERIOD ENDING 04/30/82
EMPL. 04612 NAME WILANDER, JON C DOLLAR

DAYS WORKED 15

TYPE	HRS/DYS	PAY		
REGULAR PAY	225.00	2441.25		
OVERTIME PAY	105.00	569.62		
EXPAT.PREMIUM		402.50		
**GROSS PAY			3413.37	GROSS
LESS DEDUCTIONS				
R.A.F. DEDUCTION		150.00		
***NET PAY			3263.37	NET

CHECKS

PAYEE	CHK.NO.	CO	AMOUNT	
JON WILANDER	326524	2560	400.00	
WILANDER JON C	326525	2560	2863.37	
****TOTAL CHECK AMOUNT			3263.37	CHECKS

ACCRUALS

VAC.DYS.	C.C.BONUS	RAF.BALANCE	
1.25	610.31	150.00	THIS PERIOD
2.50	1166.37	600.00*	THIS CONTRACT

*STILL TO BE DEDUCTED

DEFENDANT'S EXHIBIT 12

POST EMPLOYMENT DATA SHEET

SOCIAL SECURITY NO.: 439-52-7266 EMPLOYEE NUMBER

LAST NAME: WILANDER, FIRST: JON, MIDDLE: CHARLES

ADDRESS: 1413 W. Autumnwood Lane, CITY: Lake Charles

STATE: LA., ZIP: 70605

HOME TELEPHONE NUMBER: (318) 478-2369 ORIGINAL HIRE DATE: LATEST HIRE DATE:

BIRTHDATE: 10/23/38 AGE: 43 HEIGHT: 6FT 1IN WEIGHT: 220 LBS

RACE: [X] CAUCASIAN [ ] BLACK [ ] HISPANIC [ ] AMER.IND. [ ] ORIENTAL

MARITAL STATUS: [X] MARRIED [ ] UNMARRIED DATE MARRIED: 7/4/75

SEX: [ ] FEMALE [X] MALE ARE YOU A VIETNAM VETERAN?: [ ] YES [X] NO

IF YOU HAVE A HANDICAP AND WOULD LIKE TO BE CONSIDERED UNDER SUCH AN AFFIRMATIVE ACTION PROGRAM, INDICATE SUCH. SUBMISSION OF THIS INFORMATION OR REFUSAL WILL NOT AFFECT YOUR EMPLOYMENT. THIS IS CONFIDENTIAL INFORMATION.

[X] NOT HANDICAPPED [ ] HANDICAPPED

MILITARY SERVICE BRANCH: U.S. NAVY DATE ENTERED: 10-16-56
DATE DISCHARGED 1-15-60 DISCHARGE RANK/ RATE: E-3 SERVICE SCHOOL ATTENDED:
SPOUSE NAME: GEORGIA E. WILANDER DATE OF BIRTH: 11/16/39
CHILD: C. GRANT GOODEAUX DATE OF BIRTH: 10/16/72
EMERGENCY CONTACT – NAME: GEORGIA E. WILANDER RELATIONSHIP: WIFE
ADDRESS: 102 LAKE LANE, CITY: LAKE CHARLES, STATE: LA. ZIP: 70605 PHONE (318) 478-2369
RELIGION: PROTESTANT CHURCH NAME PASTOR'S NAME

3-25-82 /s/ Jon C. Wilander
DATE SIGNATURE

* SERVED ACTIVE DUTY ANYTIME DURING THE PERIOD AUGUST, 1964 THROUGH MAY, 1975

DATE: 1-1-82
ACTION TAKEN: EMPLOYED MCDERMOTT INT'L
CLASSIFICATION: FOREMAN CRAFTS (PAINT)
RATE: 11.35
DIVISION: M.D.I.
DEPT/FORMAN [sic]: MEA
DATE: 4-3-83
ACTION TAKEN: Completed Contract
CLASSIFICATION:
RATE:
DIVISION:
DEPT/FORMAN [sic]:
DATE: 5-7-83
ACTION TAKEN: Signed new Contract
CLASSIFICATION: F/M. CRAFTS
RATE: 11.35
DIVISION:

DEPT/FORMAN [sic]:
DATE: 7-5-83
ACTION TAKEN: On Wage Cont.
CLASSIFICATION:
RATE:
DIVISION:
DEPT/FORMAN [sic]:
DATE: 0-31-83
ACTION TAKEN: Medical Completion
CLASSIFICATION:
RATE:
DIVISION:
DEPT/FORMAN [sic]:

DEFENDANT'S EXHIBIT 12A

Feb. 9, 1984

Bonnie,

The check I'm sending you is not the latest one you've sent but as soon as I get it, I'll return it to you.

I'm gathering brochures and information for Mrs. Dunnaway and I'll get it to her quickly.

Also enclosed is a copy of Jon's release from the Dr. in Athens dated 11-1-83.

Let us hear from you, if there's a chance of Jon going back to work.

Georgia Wilander
Rt. 8 Box 796
Lake Charles, La.
70605
318-478-2369

DEFENDANT'S EXHIBIT 12(B)

JON WILANDER

DAYS ON SHORE AT DUBAI GUEST HOUSE

From	To	Number of Days
07-02-82	04-04-82	3
07-17-82	07-18-82	2
08-20-82	08-24-82	5
10-02-82	10-05-82	4
10-13-82	10-16-82	4
11-01-82	11-07-82	8
11-10-82	11-12-82	3
12-02-82	12-02-82	1
12-13-82	12-14-82	2
01-14-83	01-15-83	2
03-31-83	04-04-83	5
05-07-83	05-09-83	3
06-09-83	06-12-83	4
06-23-83	06-26-83	4

TOTAL STAYS – 14

TOTAL DAYS – 50

AVERAGE STAY – 3.57

DEFENDANT'S EXHIBIT 12(C)

JON WILANDER

1984 JOB OFFER

February 9, 1984 – Letter from Mrs. Wilander returning checks, copy of Jon's release from the doctor in Athens, Greece with a request to be advised of any job possibilities.

April 18, 1984 – Telex 4-4252 NOLA to Dubai advised Wilander available for work and request if anything available.

April 19, 1984 – Telex NL/4-817 Dubai to NOLA – advised no current or projected requirement.

August 7, 1984 – Telex NL/8-244 Dubai to NOLA advised NOLA manpower request for Paint Foreman in Egypt Fabrication Yard approved.

August 8, 1984 – Telex 8-2343 NOLA to Dubai advised Wilander declined as he was still experiencing medical problems.

Feb. 9, 1984

Bonnie,

The check I'm sending you is not the latest one you've sent but as soon as I get it, I'll return it to you. I'm gathering brochures and information for Mrs. Dunnaway and I'll get it to her quickly.

Also enclosed is a copy of Jon's release from the Dr. in Athens dated 11-1-83.

Let us hear from you, if there's a chance of Jon going back to work.

Georgia Wilander
Rt. 8 Box 796
Lake Charles, LA.
70605
318-478-2369

ADVANCED RESEARCH AND THERAPEUTIC
INSTITUTE OF ATHENS

"O ENCEPHALOS, S.A.

CONSULTANT NEUROSURGEON
Z. KAPSALAKIS

11, Patriarchou Ioakim Street 726.407
Athens 139 Phone 6827.791
Greece

z.k/ad 1-11-83

RE: Mr. CHARLES WILANDER

F.U$_P$ examination

The patient today is in good general condition. The wound is well healed.

He is in a good condition for going back to work.

Z. KAPSALAKIS
CONSULTANT NEUROSURGEON
/s/ (illegible)

Received FEB 13, 1984 – Personnel Department

Msg: @12M/JH460 Line: 6 Hdr: 1

ZCZC FFA059
DUBOC
.ORLOCOC
MSG JH460
MSG. REF. NO. 4-4252
APRIL 18, 1984
0111GMT

TO: I. SPEIRS/DUBAI

FM: B. WALDRON/NOLA

INFO: L. OWENS/DUBAI

BT
CONFIDENTIAL

JON WILANDER IS AVAILABLE FOR WORK. PLEASE ADVISE IF YOU ANTICIPATE ANYTHING IN THE NEAR FUTURE. ALSO PLEASE ADVISE IF HE WAS HOLDING A RESIDENT'S VISA AND IF IT HAS BEEN CANCELLED. FYI HIS NEW CONTACT INFO IS:

1413 W. AUTUMNWOOD LANE
LAKE CHARLES, LA 70605
PHONE: 318-478-2369

REGARDS

BT/JH
NNNN
TIME: 01-12 04/18/84 GMT
Connect Time: 18 seconds

Rcv: @1IM/6.11896 Line: 6

ZCZC FFA058 DUA 045
ORLOC
.DUBOCOC

TELEX NO: NL/04-817 APRIL 19, 1984

TO: B. WALDRON/NOLA
FR: I. SPEIRS/DUBAI

BT
CONFIDENTIAL
SUB: JON WILANDER

REF. UR TLX 4-4252

REGRET TO ADVISE THAT WE HAVE NO CURRENT OR PROJECTED REQUIREMENT FOR ABOVE NAMED. WE WILL, HOWEVER, KEEP HIM UNDER REVIEW. HIS RESIDENCE VISA WILL EXPIRE ON OCTOBER 25, 1985.

THANKS FOR PROVIDING THE UPDATE ON HIS ADDRESS.

BT/MF

=04200606
FFA058

NNNN
Time: 06:07 04/20/84 GMT
Connect Time: 64 seconds

ORLOC CA100
DUBOCOC

TELEX NO: NL/08-244 AUGUST 07, 1984

TO: V. FULHAM/NOLA
FR: I. SPEIRS/DUBAI
INFO: D. DILOSA/CAIRO

BT
CONFIDENTIAL

SUB: MPR E-554 – PAINT FOREMAN

DUBAI MANAGEMENT APPROVAL HAS BEEN OBTAINED FOR SUBJECT MPR. DETAILS AS FOLLOWS:

CORE CLASSIFICATION	:	PAINT FOREMAN
CORE NO.	:	7700
CONTRACT TYPE	:	ONE YEAR/ J.C.
WORK LOCATION	:	AIN SOUKHNA
DATE REQUIRED	:	A.S.A.P.
RATE OF PAY	:	PER MIDDLE EAST PAY SCALES
STATUS	:	SINGLE

CANDIDATE IS JON WILANDER.

BT/MF
NNNN

Msg: @11M/08-002343 Line: 6 Hdr: 1
ZCZC FFA260
DUBOC CAIOC
.ORLOCOC
Msg.Ref.No 08-002343
22:34 08/08/84 GMT

TO: IAN SPEIRS/DUBAI

FM: V. FULMAN/NOLA

INFO: D. DILOSA/CAIRO
L. CLARK/NOLA

BT

CONFIDENTIAL

CONFIDENTIAL

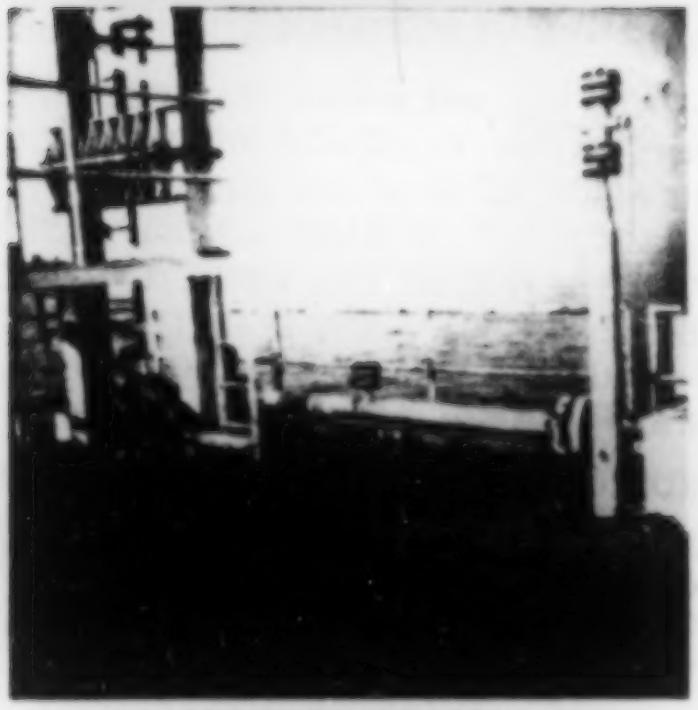
SUBJ: E554 – PAINT FOREMAN

CANDIDATE JON WILANDER HAS DECLINED THE ABOVE POSITION. REASON IS HE IS STILL EXPERIENCING MEDICAL PROBLEM RELATED TO HIS PREVIOUS ACCIDENT. PLEASE ADVISE ALTERNATE CANDIDATES. WOULD RAY WHITCHARD BE CONSIDERED AS A PERMANENT IF HE PERFORMS WELL ON HIS PRESENT 3 MONTH OR JOB COMPLETION CONTRACT?

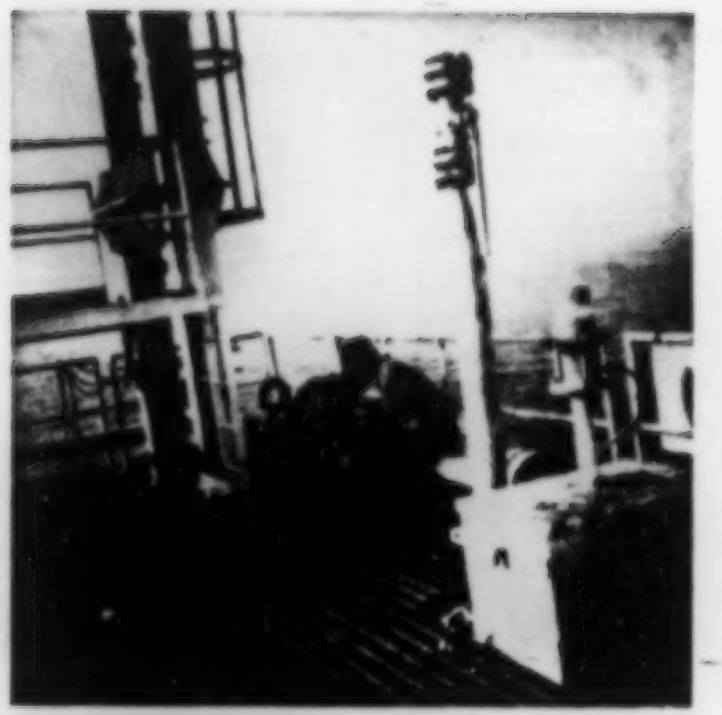
REGARDS

BT/JH
NNNN
Time: 22-37 08/08/84 GMT
Connect Time: 21 seconds

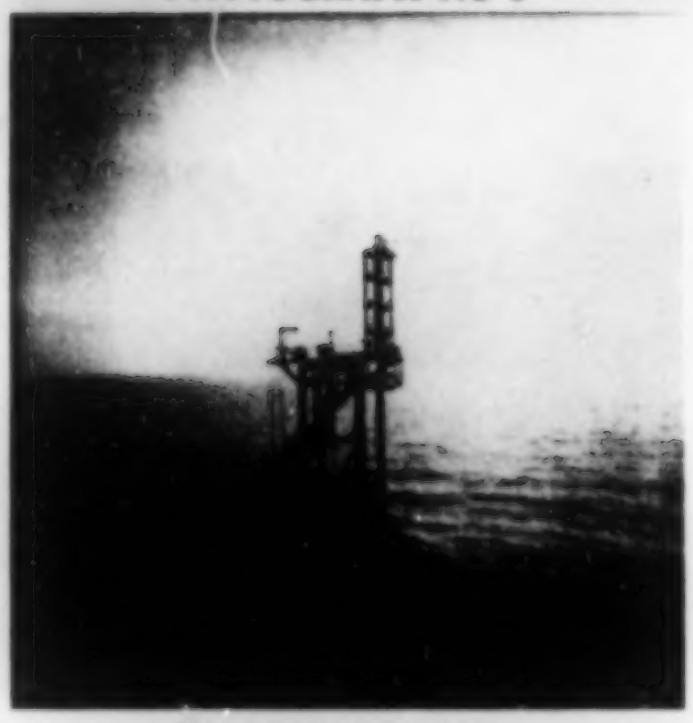
PHOTOGRAPH NO 1



PHOTOGRAPH NO 2



PHOTOGRAPH NO 3



PHOTOGRAPH NO 4

PHOTOGRAPH NO 5

PHOTOGRAPH NO 6

No. 89-1474

(1)

In The

Supreme Court of the United States

October Term, 1990

McDERMOTT INTERNATIONAL, INC.,

Petitioner,

vs.

JON C. WILANDER,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR PETITIONER

James B. Doyle
Voorhies & Labbe'
P. O. Box 3527
Lafayette, LA 70502
Telephone: (818) 232-9700
Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

I.

When a worker is injured on a fixed platform in the Persian Gulf, but claims status as a seaman under the Jones Act, 46 U.S.C. 688, by alleging connection to an American-flagged vessel, how is the United States District Court to determine which of the conflicting definitions of status constitutes American law, specifically, whether transportation-related employment functions are a pre-requisite to status under the Act?

LIST OF PARTIES

The following are the parties to this proceeding:

Jon C. Wilander
Plaintiff-Respondent

McDermott International, Inc.[1]
Defendant-Petitioner

---

[1] *Subsidiaries, Affiliates and Partnerships of McDermott International, Inc.* (Excluding Wholly-Owned Subsidiaries)

Davy McDermott Ltd.
Initec, Astano Y McDermott International Inc., S.A.
Malmac Sdn. Bhd.
McDermott Arabia Company Limited
McDermott-ETPM, Inc.
P. T. McDermott Indonesia
McDermott Incorporated
B&W Mexicana, S.A. de C.V.
Bobcock & Wilcox Beijing Company, Ltd.
Diamond Power Hubei Company Ltd.
Babcock & Wilcox Gama Kazan Teknolojisi Anonim Sirketi
Thermax Babcock & Wilcox Private Ltd.
Hudson Northern Industries, Inc.
Rotovent S.A. de C.V.
Diamond Power (Autralia) Pty. Limited
Halley & Mellowes Pty. Ltd.
Heerema-McDermott (Aust.) Pty. Ltd.
HeereMac
Panama Offshore Chartering Company, Inc.
McDermott (Nigeria) Limited
McDermott Scotland Limited
MMC – McDermott Engineering Sdn. Berhad
P. T. Babcock & Wilcox Indonesia
P. T. Bataves Fabricators
Topside Contractors of Newfoundland, Ltd.
Arabian Petroleaum Marine Construction Company
DB/McDermott Company

LIST OF PARTIES-Continued

Abahsain Hudson Heat Transfer Co. Ltd.
Construcciones Maritimas Mexicanas, S.A. de C.V.
ASEA Babcock PFBC
B&W Fuel Company
B&W Nuclear Service Company
Babcock-Ultrapower Jonesboro
Babcock-Ultrapower West Enfield
Diamond Power Specialty Limited
Especialidades Termomecanicas S.A. de C.V.
Babcock & Wilcox Services, Inc.
KBW Gasification Systems, Inc.
North American CWF Partnership
Palm Beach Energy Associates
Maine Power Services
PowerSafety International, Inc.
South Point CWF

J. B. Jones, Jr., Jennifer Jones Bercier,
and Michael Bercier of the law firm of
Jones, Jones & Alexander, P. O. Drawer M,
Cameron, Louisiana 70631
Attorneys for Plaintiff-Respondent

James B. Doyle of the law firm of
Voorhies & Labbe', P. O. Box 3527,
Lafayette, Louisiana 70502
Attorney for Defendant-Petitioner

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

DECISIONS BELOW

The decision of the United States Court of Appeals, Fifth Circuit, is reported at 887 F.2d 88 (5th Cir. 1989).

Unreported decisions of the District Court bearing on this issue, including the Court's ruling on Relator's Motion for Judgment on Findings of the Jury; and on Relator's Motion of Judgment N.O.V. are reproduced in the appendix.

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction pursuant to the granting of a Writ of Certiorari on the 18th of June, 1990, to review the judgment of the United States Court of Appeals, 5th Circuit, entered on the 30th of October, 1989.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1254(1). The Petition for Writ of Certiorari was filed timely pursuant to 28 U.S.C. 2101(c).

STATUTES PRESENTED FOR REVIEW

The Jones Act, 46 U.S.C. 688(a):

(a) Application of Railway Employee Statutes; Jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or

extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

Federal Employers Liability Act, 45 U.S.C. 51:

§51 Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence, employee defined.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any

defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

STATEMENT OF THE CASE

Jon. C. Wilander was injured on the 4th of July, 1983, in the course of his employment with McDermott International, Inc., a Panamanian corporation which does no business in the United States. [RI 436-40][1]

Wilander's employer had a contract for the work of which he was a part with the Qatar General Petroleum Corporation (QGPC), a governmental entity owned by the Sultanate of Qatar.

Wilander's job description was "painter foreman." He had executed contracts to that effect with his employer, the first in March of 1982 in New Orleans and a renewal in March of 1983 in McDermott's office in Dubai,

[1] The records in this bifurcated trial are designated as RI for the March, 1988 status litigation and RII for the July damage trial.

from which it conducted its Middle Eastern operations [J.A. 31, 54].

As a painter foreman, Wilander was called upon to supervise a crew of workmen, primarily Filipinos. The work of his crew consisted of sand-blasting, and then painting, various fixtures and piping located on the platforms owned by QGPC.

When Wilander was on a particular assignment which required him to remain offshore overnight, he slept, ate, and planned his job activities aboard the McDermott Derrick Barge DB-9, a Panamanian-flagged vessel owned by his employer. For five days of the total 15 months he spent in the Middle East, Wilander was given the use of the M/V GATES TIDE, an American-flagged vessel outfitted as a "paint boat."

The GATES TIDE, owned by Tidex International, Inc., was loaded with sand pots, an air compressor, a backhoe, and other equipment used by the painting and sand-blasting crew. During the five days Wilander had use of the GATES TIDE, it was also used to transport him and his men through the production field for the purpose of taking inventory on storage barges; transporting the crew to and from the DB-9; and, when the paint boat was tied up to a platform, to serve as Wilander's primary support station in furtherance of his platform duties.

The GATES TIDE was time-chartered to McDermott International, Inc. [D.Ex. 3, RI 220]. It first came on the job on the 29th of June, 1983, five days before Wilander's accident [D.Ex. 3, RI 220]. During that time, Wilander was assigned no navigational duties aboard the GATES TIDE. He was not considered by the master of the GATES TIDE

as a member of its crew. [D.Ex. 6, RI pp. 430-2; D.Ex. 3, RI 220; D.Ex. 4, RI 220; RI 220-224]

Wilander was injured when he was asked by a co-worker to inspect a pipe on the third level of the platform to determine if it was leaking. In the course of performing this task, a 3/8-inch bolt serving as a plug in the pipeline blew out under pressure, striking Wilander in the head.

On August 2, 1984, Wilander instituted suit against his employer, McDermott International, Inc. in the United States District Court for the Western District of Louisiana, asserting jurisdiction to lie therein pursuant to the Jones Act, 46 U.S.C. 688. In his complaint, Wilander claimed status as a seaman, but alleged connection to no particular vessel. He did not join any count for maintenance and cure [J.A. 6].

During the course of the litigation, acting through counsel, he specifically waived any claim for unseaworthiness, opting instead to base his claim solely on his employer's alleged breach of its statutorily-imposed duty to provide him with a safe place to work [J.A. 4, Minute Entry of 07-28-88].

McDermott contested Wilander's status as a seaman and his entitlement under the Act, first by Motion for Summary Judgment [J.A. 13, Ruling of the Magistrate]. Attached to that Motion was Affidavit of Daniel P. Ledet, a personnel supervisor for the employer, which outlined Wilander's job description. That description did not include any duties assigned to him by his employer relating to the navigation of any vessel [J.A. 166].

Opposed to this Motion, Wilander filed his own Affidavits, which alleged he conducted various navigational functions, including tossing lines, assisting in the tying up and securing of the vessel, and, along with all others on the boat, keeping a sharp lookout for mines in this war zone [J.A. 168, Affidavit of Wilander]. He also termed the issuance of a Panamanian seaman's card [J.A. 156] significant, but McDermott issued thousands of those and used them, not as identification of workers by trade, but as traveling documents [RI, pp. 476-7]. In any case, Wilander never contended navigation of vessels was his job; he was a painter foreman.

The U.S. Magistrate ruling on the Motion found McDermott had not satisfied the existing test for excluding Wilander from status, expressed in *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959). The case then proceeded to trial in bifurcated fashion, with the issues related to Wilander's status under the Act being tried first.

By two procedural devices during that trial, counsel for McDermott once again questioned Wilander's satisfaction of the *Robison* standard, re-examined in the *en banc* decision of *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986), specifically, that Wilander had not established that his job responsibilities satisfied the substantiality test embodied in *Barrett*. Given a choice of four possibilities (the fixed platform upon which he was injured; the Panamanian-flagged DB-9; the American-flagged GATES TIDE; and an unidentified group of vessels known as the "Tidex Fleet"), the jury chose all four, finding Wilander was connected to all by virtue of his employment.

The Fifth Circuit concluded its test of substantiality voiced in *Barrett* applied as "American Law." Then, it concluded Wilander had presented "sufficient evidence to support the jury's finding" on status with respect to the GATES TIDE, thus granting him a Jones Act remedy, although he would not meet the transportation function requirement of other Circuits. The judgment of the trial court on status was affirmed and made final, while issues of liability and damages were remanded for trial on unrelated grounds.

It is to that decision this Petition is directed.

SUMMARY OF ARGUMENT

I.

When an oilfield worker claims status under the Jones Act, *46 U.S.C. 688*, he can only establish his entitlement to proceed thereunder as a "seaman" if he proves (1) a permanent connection, more or less, with a vessel in navigation; and (2) that he contributed to the function of such a vessel by performing significant navigational duties.

II.

By its terms, the Jones Act applies to seamen. Decisions of the Fifth Circuit, which broaden that term to include workers whose job responsibilities have nothing to do with navigation, are in conflict with decisions of this Court defining "traditional maritime activity" and "navigation." Those decisions can only be harmonized by ruling that an oilfield worker such as Wilander is outside the scope of coverage of the Act unless, in addition to his

non-maritime oilfield activities, he contributes significantly to the function of the vessel to which he claims attachment in its use *as a vessel*.

III.

The transportation function test embodied in *Johnson v. John F. Beasley, supra,* is consistent with the purpose of the Jones Act and should be adopted as the uniform national rule.

ARGUMENT

Analysis of Wilander's Claim for Seaman Status Requires Consideration of His Transportation Function to be Consistent With the History and Development of Jones Act Remedies

With its grant of *certiorari* in this case, the Court has an opportunity to formulate a uniform national rule regarding the scope of coverage under the Jones Act, 46 U.S.C. 688. There has been no such rule for 35 years, primarily because of the Fifth Circuit's insistence on applying a test which does not require the putative seaman to perform navigational duties, i.e., those related to the navigation of the vessel as a means of transport over water rather than its "special mission." *Offshore Company v. Robison,* 266 F.2d 769 (5th Cir. 1959); *Barrett v. Chevron U.S.A., Inc.,* 781 F.2d 1067 (5th Cir. 1986).

Other Circuits use aid to navigation as a determining factor. *Johnson v. John F. Beasley Construction Company,* 742 F.2d 1054 (7th Cir. 1984); *Simko v. C&C Marine Maintenance Company,* 594 F.2d 960 (3rd Cir. 1979). The split among the

Circuits is exclusively over whether or not to include within the scope of Jones Act coverage those persons who, while required to be aboard ship in connection with their employment and advancing in some way the broad mission of the ship, have no part to play in its transportation/navigation function.

Since Wilander would not be covered under American law but for the jury's finding of an employment-related connection with an American vessel, the consequence of the lack of a uniform American rule is magnified.

The Court has clearly enunciated the circumstances under which American law applies to a maritime transaction. *See, Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970); *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953). The Fifth Circuit has distilled the Court's decisions to a determination that the flag of the vessel is the single most important factor in deciding which law to apply. *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159, 824 F.2d 972 (5th Cir. 1987), *cert. den.* 484 U.S. 977, 108 S.Ct. 488, 98 L.Ed. 2d 486 (1987) [affirmed other grounds, 868 F.2d 717 (5th Cir. 1989), *cert. den.* 110 S.Ct. 150, 107 L.Ed.2d 108 (1989)].

The following propositions therefore ensure:

(1) Wilander has a Jones Act cause of action if, and only if, he has an employment-related connection with an American vessel;

(2) Wilander's connection with that American vessel must be determined in accordance with American law;

(3) Under *Robison-Barrett*, Wilander presented sufficient evidence for the case to go to the jury on seaman status; and,

(4) Under the test of other Circuits, utilizing the transportation function analysis, he did not.

Seamen's Remedies Before the Jones Act

The first case of the modern era establishing the relationship between an injured seaman and his employer arose from an *in rem* libel by a crew member to recover for injuries he had received in carrying out an order given by the ship's master. There was apparently no question that the order was improvidently given, and led directly to the injuries of which the seaman complained in his libel.

In propounding his interpretation of the existing maritime law remedies available to seamen at that time, Justice Brown declared the law "settled" upon the following propositions:

1. That the vessel and her owners are liable in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.

2. That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by a seaman in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship. (Citation Omitted)

3. That all the members of the crew, except, perhaps, the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of his maintenance and cure.

4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident.

The Osceola, 189 U.S. 158, 23 S.Ct. 483 (1903).

The concept of "unseaworthiness" as established in the Opinion clearly provided such a remedy to persons employed on board ship. The development of this concept, particularly when considered in connection with the later-passed Jones Act, has been a key component in what one commentator has classified as a "revolution" occurring in the 1930's and 1940's with respect to liability for such damages. The genesis of this revolution was the passage of the Jones Act in 1920.

The Jones Act: Relationship With FELA, "Haverty," and The LHWCA Amendments

The Merchant Marine Act of 1920 contained a significant alteration to the then-existing omnibus statute enacted " . . . to promote the welfare of American seamen in the Merchant Marine of the United States; to abolish arrest and imprisonment as a penalty for desertion . . . ; and to promote safety at sea." 38 Stat. 1164 (1915). What we now term the Jones Act, 46 U.S.C. 688, which was enacted as Section 33, provided a common law right of

action and, thereby, broadened the scope of remedies outlined in *The Osceola*. The overall purpose of the Act was stated as follows:

> That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a Merchant Marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency . . . and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a Merchant Marine. . . . " Report of the 66th Congress, Session II, Chapter 250 (1920), at p. 988.

The relationship to maritime commerce provided dual bases upon which the authority of Congress to enact the legislation rested: the Commerce Clause of the Constitution, Article I, Section 8, Clause 18; and, the constitutional grant to the Court of the judicial power to determine the validity of "all cases of admiralty and maritime jurisdiction" (Article III, Section 2. *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 63 S.Ct. 488, 87 L.Ed. 596 (1943).

The Jones Act shares its commerce clause connection with the Federal Employers Liability Act. The FELA protects workers "while engaging in commerce between any of the several states or territories, or between any of the states and territories . . . and any foreign nation or nations . . . " (*45 U.S.C. 51*).

Maritime commerce, like interstate commerce, is an activity which Congress may regulate. It is also an area

over which the national Government has an interest in creating a uniform rule, as first recognized in *Southern Pacific Company v. Jensen*, 244 U.S. 205, 37 S.Ct. 524 (1917), which precluded the New York Worker's Compensation Commission from limiting a worker killed while engaged in stevedoring activities to a compensation remedy.

When there has been any doubt of a worker's status with respect to interstate commerce, and inclusion under FELA, the worker's connection with transportation activities has been the determinative factor. *See, Shanks v. Delaware, L. & W. R. Co.*, 289 U.S. 556, 36 S.Ct. 188, 60 L.Ed. 436 (1916). Even the expanded definition recognized to exist in the 1939 amendment is limited by the Court to its transportation connection. In *Reed v. Pennsylvania Railroad Co.*, 351 U.S. 502, 76 S.Ct. 958, 100 L.Ed. 1366 (1956), a clerk in the railroad company's office was found to have substantial impact on transportation activity, and thereby, on interstate commerce, even though her job was limited to filing blueprints of bridges, railroad cars, and tracks. Justice Milton, in concluding she was covered, said:

> The benefits of the Act are not limited to those who have cinders in their hair, soot on their shoes, or calluses on their hands. Section 1 cannot be interpreted to exclude petitioner from its benefit without further consideration of the function she performs and its impact on interstate commerce.

The parallels with the Jones Act, and Justice Douglas' characterization of those who do not "hand, reef, and steer" as seamen in *Norton v. Warner Co., infra*, are obvious. The difference is, the Court has never extended

the FELA to cover persons without at least some connection to the transportation activity which, under both Acts, constitutes "commerce."

After the passage of the Jones Act, a stevedore engaged in the same activity as Jensen was held entitled to use it to bring an action against his employer. *International Stevedoring Company v. Haverty*, 272 U.S. 50, 47 S.Ct. 19 (1926). Reacting to *Haverty*, Congress passed the Longshore and Harbor Worker's Compensation Act in 1927, which excluded from its coverage "master[s] and members of crews of any vessel." [33 U.S.C. 903(b)]

Judicial interpretations made of a railroad worker's status under FELA are usually cast in terms of his relationship to interstate commerce; a putative Jones Act seaman's relationship to the commerce of his vessel; and, the relationship of a longshoreman under the LHWCA to, first, work to be performed on navigable waters and, currently, maritime employment. Similarities abound.

In *Jensen, supra*, the Court said, in failing to grant a worker status under the FELA:

> Evidently the purpose was to prescribe a rule applicable where the parties are engaging in something having *direct and substantial connection with railroad operations*, and not with another kind of carriage recognized as separate and distinct from transportation on land and not merely adjunct thereto. It is unreasonable to suppose that Congress intended to change long-established rules applicable to maritime matters merely because the ocean-going ship concerned happened to be owned and operated by a company also a common carrier by railroad. *Jensen*, at p. 527. [Emphasis Added]

Ever-mindful of the commerce clause restrictions upon the reach of the Act, courts, over 30 years, developed a "moment of injury" rule for disposing of FELA cases, essentially stating that a worker could move in and out of zones of coverage of the FELA, depending upon the work which he was doing at the time of his injury. *See, e.g. McCoy v. Southern Pacific Co.*, 83 P.2d 970 (Ca. 1938), *cert. den.* 305 U.S. 639, 59 S.Ct. 106, 83 L.Ed. 411 (1938). This "hypertechnical" distinction was eliminated by the amendments to the FELA in 1939 which allowed an employee to place himself within the coverage of the Act if his duties "directly or closely and substantially" affect interstate commerce (Act, Aug. 11, 1938).

The Jones Act was not similarly amended by Congress. However, the 1940's and 1950's saw a like expansion, by the Courts, in the status of workers covered under its umbrella.

The Court held a worker who "performed such additional tasks as throwing the ship's rope and releasing or making the boat fast" but "performed no navigation duties;" "had no duties while the boat was in motion . . . [,] slept at home and boarded off ship" was covered under the LHWCA rather than the Jones Act. *South Chicago Coal and Dock Company v. Bassett*, 309 U.S. 251, 60 S.Ct. 544 (1940).

The determinative factor in *Bassett* was whether this engine mechanic performed navigational duties:

> [T]he general sense of the work crew is "equivalent to ship's company" . . . in *The Bound Brook*, D.C. 146 F. 160, 164, it was said that "when the single 'crew' of a vessel is referred to, those persons are naturally and primarily meant who

are on board her aiding in her navigation. . . . " Judge Howe in *The Buena Ventura*, D.C. 243 F.2d 97, 99, thought that statement was a fair summary, and, in his view, one who served the ship "in her navigation" was a member of the "crew."

But, citing many of the same authorities, Justice Douglas four years later expanded the definition by finding a bargeman who lived, ate, and slept on a barge a seaman, even though his duties were those of a laborer. *Norton v. Warner Co.*, 321 U.S. 565, 64 S.Ct. 747 (1944). In so doing, the oft-quoted expansive interpretation of "crew" appears:

> . . . [N]avigation is not limited to "putting over the helm." It also embraces duties essential for other purposes of the vessel. Certainly members of the crew are not confined to those who can "hand, reef, and steer."
>
> *Norton*, 321 U.S. at p. 572; 64 S.Ct. at p. 751.

The Court in 1957 found a dredge company's employee who lived onshore but performed such tasks aboard the dredge as making soundings; washing and cleaning navigational lights while the dredge was in transit; but, was injured on land incident to his employment, presented sufficient facts to have a jury determine his status:

> . . . [b]ecause there was testimony introduced . . . tending to show that he was employed almost solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have significant navigational function when the dredge was put in transit . . .

> *Senko v. La Crosse Dredging Corporation*, 352 U.S. 370, 373-4; 77 S.Ct. 415, 417-18 (1957).

Comparing the ruling with the facts through the dissenter's eyes is revelatory both of the revolutionary development of Jones Act status, and the ease with which ordinary, land-based tasks can be transformed into seaman's duties:

> There is nothing in the record to indicate that petitioner was responsible for the seaworthiness of the dredge, or that he ever performed or was qualified to perform any duties of that type. True, he cleaned lights, but these were not "navigation" lights, as the dredge did not carry the latter, except when under tow. In effect, he cleaned lanterns and placed them when the construction work continued at night. Again, he took "soundings" but in spite of the maritime flavor of the phrase, the facts permit no salty inference, since the soundings were taken not in aid of navigation (the dredge being completely stationary at such times), but only to measure the amount of silt pumped from the canal. All this means is that Senko occasionally measured the work progress on an earth-removal project, a task about as nautical as measuring the depth of a natural swimming pool under construction in marshy ground . . . he was simply a handy-man and assistant for a crew of men operating an earth-removing machine which happened to be afloat and which, occasionally and always in Senko's absence, was pushed from place to place.
>
> *Senko, supra*, Dissent of Justice Harlan, 352 U.S. at 376-78.

The majority in *Senko* was obviously emboldened by the Court's summary reversal of a Fifth Circuit ruling which had distinguished a member of a ship's crew from

a member of an oil drilling crew. *Gianfala v. Texas Company*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775 (1955); *reh. den.* 350 U.S. 960, 76 S.Ct. 346 (1956).

The clear import of the Court's action in *Gianfala*, coupled with the expansive interpretation of navigational function in *Senko*, provided adequate foundation for Judge Wisdom's familiar *Robison* test:

> [T]here is an evidentiary basis for a Jones Act case to go to the Jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water, but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.
>
> 266 F.2d 769 (5th Cir. 1959)

Although not dispensing with the requirement that a worker be involved in navigation, it liberalized the definition of navigation to include all those functions of the vessel performed in maritime commerce.

The "special function" feature of *Robison* has been used to extend coverage under the Jones Act to workers not traditionally found within its ambit, and who are by no usual definition of the work a member of a "ship's company" or "crew". However, the twin requirements of permanency and contribution to the special function of the vessel have traditionally restricted the circumstances

to which the expansive definition could be applied. An oilfield worker such as Robison is a member of the crew primarily because his job requires him to live, eat, and sleep aboard a structure whose only use requires it to float on water. Others, whose activity is just as necessary to the "special function" of the vessel, but who lack the permanency connection, are not.

The LHWCA's Definition of "Member of a Crew" and of "Maritime Employment"

The Fifth Circuit thereafter employed a method of defining coverage under either the Jones Act or the LHWCA by first determining whether the subject worker was a seaman under *Robison*. This test was employed even if the plaintiff was engaged in activities enumerated in 33 U.S.C. 903(b), such as a longshoreman, a ship builder, or a ship repairer. *See, Crador v. Louisiana Department of Highways*, 625 F.2d 1227, 1229 (5th Cir. 1980); *Reynolds v. Ingalls Shipbuilding Division, Litton Systems, Inc.*, 788 F.2d 264 (5th Cir. 1986), *cert. den.* 479 U.S. 885, 107 S.Ct. 278, 93 L.Ed.2d 253 (1986).

Congress amended the LHWCA in 1972 to define "maritime employment." Since the LHWCA is, like the FELA and the Jones Act, grounded in the Commerce Clause, this amendment must have some effect, either limiting or expanding, on the status of persons seeking its coverage relative to their role in the commerce regulated by the Act.

In spite of the 1972 amendments to the LHWCA, and in spite of clear Supreme Court precedent placing statutorily-defined longshoremen outside the scope of Jones

Act coverage [*see, Swanson v. Marra Brothers*, 328 U.S. 1, 66 S.Ct. 869, 90 L.Ed. 1045 (1946); *Kyles v. James W. Elwell & Company*, 296 F.2d 703 (7th Cir. 1961), *cert. den.* 369 U.S. 852, 82 S.Ct. 936, 8 L.Ed.2d 10 (1962)], the Fifth Circuit still clung to *Robison*.

It was not until 1987 that the Fifth Circuit adopted a test for coverage designed to exclude statutorily-defined longshoremen from the scope of coverage under the Jones Act rather than the reverse, using *Robison* as a starting point. *Pizzitolo v. Electro-Coal Transfer*, 812 F.2d 977 (5th Cir. 1987), *cert. den.* 484 U.S. 1059, 108 S.Ct. 1013, 98 L.Ed. 978 (1988).

> Congress could have hardly made it clearer that it intended to afford complete coverage to employees engaged in the occupations enumerated in the [LHWCA] act so long as the location of injury met the situs test so that harbor workers who worked on both vessel and the adjacent dock would not walk in and out of coverage during the course of their work. The benefits of the Act were extended to them while working on land adjacent to the water . . . . Although the Supreme Court has had occasion to consider the definition of "employee" under the amended Act in several cases, it has not addressed whether an employee engaged in one of the occupations expressly covered by the LHWCA is eligible for Jones Act benefits. Our cases, however, provide support for the view that a workman engaged in one of these occupations is unqualifiedly covered by the LHWCA and therefore ineligible for benefits under the Jones Act.
>
> *Pizzitolo*, at p. 982.

Other Courts, even with the benefit of *Robison*, and without the clarifying 1972 amendments, had already reached that conclusion:

> Longshoremen, as a matter of law, have not been regarded as crewmen of a vessel belonging to their employer and, therefore, are not qualified to maintain a civil action against their employer-vessel owner under the Jones Act.
>
> *Bowers v. Kaiser Steel Corporation*, 422 P.2d 848 (Ak. 1967).

Other Erosions of the Robison Standard:
Herb's Welding v. Gray

One of the fundamental pillars of support for *Robison* collapsed when this Court decided *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 105 S.Ct. 1421, 84 L.Ed.2d 406 (1985).

Gray was a welder for his employer, which provided its services to the owners of drilling platforms. He spent about three quarters of his working time on platforms in state waters and the rest on fixed platforms on the Outer Continental Shelf. He built and replaced pipelines and did general maintenance work on the platforms that he serviced. Although of a different craft, his job duties bore the same relationship to the platform as the functions being performed by Wilander in the Persian Gulf.

Gray was injured when he burned through a gas flow line on a fixed platform located in state waters, causing an explosion. *Certiorari* was granted to determine whether the Court of Appeals had properly applied the test for maritime connexity espoused in *Rodrigue v. Aetna Casualty and Surety Company*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969).

The question before the Court was: is oil drilling activity, together with the crafts required to perform it, maritime employment when it takes place under, in connection with, or on navigable waters?

In answering that question in the negative, the Court first found "untenable" the proposition that everyone on board a stationary drilling platform in state waters should be covered under the LHWCA. The *Rodrigue* rule that stationary drilling platforms are outside the admiralty jurisdiction of the U.S. District Courts was also reemphasized.

In finally holding Gray not to be engaged in "maritime employment," the Court considered as significant, and quoted, remarks made by the general counsel of the International Association of Drilling Contractors to the Senate Subcommittee which was then considering whether to extend the LHWCA to its workers:

> Irrespective of design, bottom resting, semi-submersible, or full-floating, these structures [drilling platforms] perform only as a base from which the drilling industry conducts its operations. The operations, once the structure is in place, are no different from that which takes place on dry land. All of the equipment and methods utilized in the drilling operations are identical to our land-based operations.
>
> *Herb's Welding*, 470 U.S. at p. 425; 105 S.Ct. at p. 1428, Footnote 11.

It has been argued that the Court's *Herb's Welding* decision should be limited to its facts, that is, applied solely to determinations of coverage under the LHWCA. When read together with *situs* cases, this reasoning fails. In *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S.

249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972), the Court required that a plaintiff establish the admiralty jurisdiction of Article III Courts by establishing a "significant relationship" between the alleged wrong and "traditional maritime activity." *409 U.S. at p. 268*. If oil drilling is not "traditional maritime activity" as per *Herb's Welding*, then persons claiming status under an Act passed pursuant to the Commerce Clause, which the courts have uniformly interpreted as requiring a connection to maritime commerce to be enforceable, lose part of their argument.

Given the *Rodrigue* rule placing claims on offshore platforms outside the admiralty jurisdiction on a *situs* test, a move completely approved by the Court in *Herb's Welding*, additional analysis is required to establish the water-borne connection between the questioned activity and the jurisdiction sought to be invoked. In *Executive Jet*, the Court cited, with approval, the following quotation from the Sixth Circuit:

> Absent such a relationship, admiralty jurisdiction would depend entirely upon the fact that a tort occurred on navigable waters; a fact which in and of itself, in light of the historical justification for federal admiralty jurisdiction, is quite immaterial to any meaningful invocation of the jurisdiction of admiralty courts.
>
> *Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962, at p. 966 (6th Cir. 1967).

The Court must harmonize *Executive Jet*, *Herb's Welding*, and *Rodrigue* by declaring those activities related to offshore oil drilling are not "traditional maritime activity." Once this is established, the weak negative authority

established by the Court in *Gianfala, supra,* must of necessity be overruled, and with it, *Robison,* insofar as its broad definition of navigational function is concerned.

Wilander was employed outside the territorial jurisdiction of the LHWCA or the Outer Continental Shelf Lands Act, 43 U.S.C. 1333(b). Therefore, his activities in this regard were never scrutinized. But if oil-related jobs do not constitute maritime employment, the authority granted under *Robison-Barrett* to make oilfield workers seamen loses its potency, particularly for people like Wilander, whose role with respect to maritime employment was tenuous to begin with.

Robison at the Barricades:
Johnson, Simko, Barrett, et al

While giving lip service to the *Robison* standard, and in some cases citing it directly and claiming to abide by its terms, a worker's connection with navigational responsibilities began to take on increasing significance in the middle 70's. The Fourth Circuit, citing two Fifth Circuit *Robison*-test cases, found a person who performed "intermittent non-navigational duties aboard a barge" outside the scope of Jones Act coverage. *Whittington v. Sewer Construction Company, Inc.,* 541 F.2d 427 (4th Cir. 1976). Along the way, the opinion also performed its own independent analysis of the *Senko-Bassett* rule, and classified a "member of [the] crew" as one "naturally and primarily on board to aid in her navigation." *Whittington,* at p. 434.

Another babystep away from the *Robison* standard, and into navigation, occurred when the Third Circuit held:

> . . . [A] maritime worker who does not actually go to sea but who is injured while performing duties on a navigable vessel must establish that he performs significant navigational functions with respect to that vessel in order to recover under the Jones Act.
>
> *Simko v. C&C Marine Maintenance Company,* 594 F.2d 960 (3rd Cir. 1979), *cert. den.* 444 U.S. 833, 100 S.Ct. 64, 62 L.Ed.2d 42 (1979).

Meanwhile, other Circuits, to greater or lesser degrees, chose to use the "navigational function" test. The Second Circuit holds seamen are only those aboard a vessel "naturally and primarily as an aid to navigation." *Salgado v. M. J. Rudolph Corp.,* 514 F.2d 750 (2nd Cir. 1975). The Sixth is likewise, saying a worker "satisfies the 'in aid of navigation requirement' if his duties contribute to the operation of the vessel." *Peterson v. Chesapeake and Ohio Railway Company,* 784 F.2d 782 (6th Cir. 1986).

The Eighth has cited *Robison* as its test. However, it defines a vessel as "virtually any floating structure used for *transport* in navigable waters." *Slatton v. Martin K. Eby Construction Company, Inc.,* 506 F.2d 505 (8th Cir. 1974). The Ninth appears to require association with the navigational function of the vessel, at least as respects fisheries workers whose duties do not contribute to the navigation of the vessel. *Worthington v. Icicle Seafoods, Inc.,* 774 F.2d 349 (9th Cir. 1984), *cert. den. in part* 474 U.S. 900, 106 S.Ct. 270, 88 L.Ed.2d 224 (1985). So, although frequently cited, *Robison* is always distinguished.

Only the Seventh Circuit has made a frontal assault on *Robison*. An ironworker brought a Jones Act claim against his employer, which was also a construction barge owner, in the federal courts of Illinois. First noting that "[c]laims brought under the Jones Act have not been litigated frequently in this Circuit," the Court reviewed all pertinent status litigation, including *Robison*, with a critical eye:

> . . . [W]e think the second part of the *Robison* test strays from important Jones Act principles when it speaks of the employee's duties as having to relate only to the "function of the vessel or the accomplishment of its mission" without further qualifying "function" and "mission" in terms of the *transportation* functions and mission of the vessel . . . .
>
> Because a Jones Act "seaman" is one who is a member of a *crew of a vessel* . . . , and because a "vessel" under the Jones Act, while interpreted liberally, has been consistently defined as a floating structure that must have as one of its functions the transportation of personnel or materials across navigable waters . . . we believe it is the employee's relation to the transportation function of the vessel, i.e., whether the employee contributes to the maintenance, operation, or navigation of the vessel as a means of transport on water, that is critical for Jones Act purposes. Such an interpretation fulfills what we believe to be the central purpose of the Act: to provide protection for those subjected to risks associated with the transportation function of vessels on navigable waters.
>
> *Johnson v. John F. Beasley Construction Company*, 742 F.2d 1054 (1984), *cert. den.*, 469 U.S. 1211, 105 S.Ct. 1180, 84 L.Ed.2d 328 (1985), at pp. 1061-2. [Emphasis Added]

In espousing this interpretation of the Jones Act, the *Johnson* Court was entirely consistent with the purposes for which the Jones Act was passed; with the definitions of "commerce," as had been judicially made in *Reed* and *Jensen, supra*, and legislatively in the 1972 amendments to the LHWCA; and with that quality which separates those who earn their livelihood from the commerce of the sea, and are thus within the zone of protection intended to be afforded by Congress to American merchant mariners, and those whose work, while having a water vista, is the same as that performed on land.

Those who continue to favor the *Robison* standard jealously guard its applicability. In fact, Judge Wisdom had occasion to point out dramatically the differences between *Robison* and those Circuits employing a "navigational function" test when he was sitting by designation in a Ninth Circuit case.

His forceful dissent classified *Robison's* inclusion of oilfield workers as seaman as a "generally accepted principle" which had withstood the test of time. He also claimed navigational requirements have been liberally interpreted by Courts. Even so, the other two judges on the panel held a research scientist killed when he fell overboard from an oceanographic research vehicle was outside the scope of seaman status because his duties were scientific, not navigational. *Craig v. M/V PEACOCK*, 760 F.2d 953 (9th Cir. 1985).

Against this background, the Fifth Circuit granted *en banc* rehearing in *Barrett v. Chevron U.S.A., Inc.*, cited *supra*. *Barrett* is usually cited as a reaffirmation of *Robison*, with an additional deference to the substantiality of the

time a worker spends in maritime versus non-maritime employment. After *Barrett*, many cases have resulted in a mathematical percentage assessment of a worker's land-based as opposed to water-based duties. This assessment tends to place people either inside or outside the scope of Jones Act coverage, depending on the amount of work done in either locale. *See, e.g., New v. Associated Painting Services, Inc.*, 863 F.2d 1205 (5th Cir. 1989). The most significant holding of *Barrett* is to reaffirm the *Robison* requirement for the submission of these essentially fact-based matters to the jury.

Four of the Circuit's judges specially concurred "in order that there can be a rule on the question in our Circuit . . . " but would have preferred to adopt the *Johnson* rule. In so stating, Judge Gee said, for the four specially concurring judges:

> So long as Jones Act benefits are more attractive than those of the other marine compensation schemes, astute counsel will seek to qualify their clients as "seamen," A bright-line rule is called for, one that nudges coverage back towards the blue-water sailor for whom the Jones Act was meant. The *Johnson* test is such a rule; I would adopt it if I could. But because it is more important to have a rule than to have the correct one, I concur.
>
> *Barrett, supra*, Special Concurrence of Judge Gee, et al, at P. 1076.

Other special concerns were voiced by Judge Rubin for five others who dissented from part of the verdict. He wrote:

> Seaman status is generally a question for the jury and should be left for the jury determination *even when the claim to seaman status appears relatively marginal*. Status should be decided as a question of fact and not by summary judgment unless there is no genuine dispute of material fact, and the uncontroverted facts inescapably determine status as a matter of law.
>
> *Barrett, supra*, Dissent of Judge Rubin, at p. 1078.

Judge Rubin's position has continued to be a mischief-maker in the status determination area. Such deference to what a jury might do continued to create problems, even after *Barrett*. *See, e.g., Leonard v. Dixie Well Service & Supply, Inc.*, 828 F.2d 291 (5th Cir. 1987); *Complaint of Patton-Tully Transportation Company*, 797 So.2d 206 (5th Cir. 1986); *International Oilfield Divers v. Pickle*, 791 F.2d 1237 (5th Cir. 1986), *cert. den.*, 479 U.S. 1059, 107 S.Ct. 939 (1987); *Smith v. Odom Offshore Surveys, Inc.*, 791 F.2d 411 (5th Cir. 1986); and many others which place an assortment of welders, roustabouts, drillers, rig watchers, and other oilfield workers within the scope of seaman status, at least with respect to whether or not the issue should be submitted to a jury.

In practice, *Barrett* gives lip service to the jury trial function of the Jones Act, while reserving status questions to Judges. Juries have trouble with concepts as ill-defined as "substantiality." Even lawyers have a difficult time defining the terms, and, as a result, judges tend to read the standard *Robison* definition to the jury. Such a reading, in Wilander's case, resulted in the jury finding him connected, by reason of his employment, to every structure and/or vessel which he encountered in his job. *Simko, supra*, is another case where the marginal worker

was classified as a seaman, primarily because he worked on water. The Rule has operated to create seamen of those workers whom the jury classifies as seamen, unless a judge rules they are not, as a matter of law, and the jury's view of "seamen" does not often comport with traditional admiralty motives – contact with the sea is usually enough.

Some judges take a more expansive view than others. In the Eastern District of Texas, after *Robison* but before *Barrett*, a helicopter was found to be a vessel, and a helicopter pilot was ruled a seaman because his work in transporting personnel and equipment from land to the drilling rigs upon which he touched down was an integral part of the special function of the rig – to drill for oil. In reaching that opinion, Judge Fisher stated the following:

> The Court recognizes that today's finding that the helicopter was a vessel is a departure from the traditional concept of a vessel. The result it reaches today is no more strange than the Fifth Circuit cases holding that movible [sic] offshore drilling platforms are vessels for Jones Act purposes . . . .
>
> *Barger v. Petroleum Helicopters, Inc.*, 514 F.Supp. 1199 (E.D. Tex. 1981).
>
> Enough said.

Wilander, as a Person With Only Marginal Claim to Status Under the Jones Act, Should be Especially Scrutinized With Respect to the Transportation Functions He Performed

Close cases require critical scrutiny of the facts. While Wilander would not have seemed to fit even the

Fifth Circuit test for status, the Fifth Circuit's finding of a sufficient evidentiary basis under *Robison-Barrett* ends that inquiry. While we do not concede the case is close, if it is, even more attention to detail is warranted.

Citing an earlier Supreme Court case, *Johnson* recognized:

> If the Jones Act is to retain any limitations on its coverage, we believe the employee's duties with respect to the transportation function of the vessel should define them. We conclude that *when the person's status as a member of the crew is equivocal* the work done by [the] employee will be crucial . . . . [Emphasis Added]
>
> *Johnson, supra,* citing *Braen v. Pfeiffer Transportation Company,* 361 U.S. 129, 131; 80 S.Ct. 247-249; 4 L.Ed.2d 191 (1959).

Critically viewing the tripartite connection required for the inclusion of a marginal seaman such as Wilander within the Act is entirely appropriate, consistent with the Court's review of status questions under the FELA, LHWCA, and the Jones Act, and brings such a definition of status closer to the legislative purpose of the Act: to provide for the safety of merchant mariners and sailors, not *oilfield workers*.

Those who oppose a narrow definition of status invariably urge, as did Judge Wisdom in his *Peacock* dissent, that such will remove from Jones Act coverage "bartenders and musicians on cruise ships, maids and stewards on passenger ships, and many other members of a ship's crew who have no more to do with navigation than [the decedent] had." *Craig v. M/V PEACOCK, supra,* at p. 957.

As Justice Harlan pointed out in his *Senko* dissent, this begs the question:

> I do not, of course, contend that men such as ship's cooks cannot be members of a crew merely because their actual jobs have nothing to do with making the vessel move. The vital distinction is that such men do contribute to the functioning of the vessel *as a vessel* – as a means of transport on water. Not so *Senko*, whose duties had absolutely nothing to do with the dredge in its aspects as a *vessel*.
>
> *Senko*, 352 U.S. 370, 377; 77 S.Ct. 415, 415, Footnote 5.

If it can be said that Wilander's job had anything at all to do with the sea, a dubious proposition at best, it had nothing to do with the movement of vessels. The primary hazards to which Wilander was exposed were those inherent in the construction work he was performing. Indeed, his injury resulted while he was observing a high pressure test on a pipeline. Such a result has no connection with maritime activity. Wilander seeks to obtain status under the Act, first and foremost, because he rode a boat to the site of his accident, and such should not be allowed.

It should never have gotten to the jury. As a matter of law, Wilander should have been excluded from the scope of coverage because his function had nothing to do with the movement of the GATES TIDE. If it did not, he had no status as to that vessel, and, thus, no claim under American law.

CONCLUSION

The inventiveness of American lawyers, seeking the "more attractive" benefits of the Jones Act (*c.f.* Judge Gee's concurrence in *Barrett*) has complicated a simple proposition: the protection of American seamen, and the creation and support of an American merchant marine.

Should workers on specialty vessels be seamen? No blanket statement can be made. Such a plethora of workers comes to mind that a uniform definition of terms interspersed throughout, such as "navigation," "function of the vessel," and "traditional maritime activity" can get lost in the translation.

When the words of the Act are accorded their everyday meaning, it is clearly intended not to protect oilfield workers, but members of the American merchant fleet. Its scope could be broadened, it is argued, to those who show some common characteristics with sailors, such as whether they routinely and ordinarily face the "perils of the sea" in their work. *Robertson*, "Current Problems in Seaman's Remedies: Seaman Status, Relationship between Jones Act and LHWCA, and Unseaworthiness Actions by Workers not covered by LHWCA," 45 *La. Law Review* 875 (1985), at p. 887.

But even with that test, Wilander fails in his attempt to obtain the benefits of a seaman. Wilander was a platform worker, pure and simple, whose occupation required him to travel to and from the place of its performance by water. While he may have faced some of the same "perils of the sea" as traditional sailors, he did so in no different fashion than a resident of Staten Island riding to work in Manhattan on the ferry.

Among the Circuits, the Fifth stands alone in its rejection of navigational function as a true measure of the connection between "maritime commerce" and the person claiming benefits under the Act. Two justices of this Court have recognized this conflict. *See, Lormand v. Aries Marine Corporation, et al,* 484 U.S. 1031, 108 S.Ct. 789, 98 L.Ed.2d 774 (1988) and *International Oilfield Divers, Inc., et al v. Pickle,* 479 U.S 1059, 107 S.Ct. 939 (1987).

If *Barrett* was intended to clarify, it has confused. Not only that, it has led to absurd results. In this case, other than the fact of Wilander's home residence status in the Western District of Louisiana, there is no rational connection between the Fifth Circuit and the *situs* of Wilander's accident. Thus, there is no ready reason the Fifth Circuit's test should apply to a determination of Wilander's status, save the location of the litigation. Clearly, one of the driving factors of *Robison* is absent; oil and gas exploration off the Louisiana and Texas costs (*Robison*, at p. 780).

McDermott International, Inc. would have been amenable to service to a Tennessee resident alleging injury identical to Wilander's, under circumstances identical to his. If the fortuitous placement of this lawsuit had been in Memphis rather than Lake Charles, Wilander would have failed to meet the test of status.

The strength of our admiralty law has been its uniformity. Where doubt exists, decisions upholding the uniformity of maritime law use that criteria as the supreme decision-maker. *See, e.g., Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970); *Southern Pacific Company v. Jensen*, 244 U.S. 205, 37 S.Ct. 524 (1916); *Offshore Logistics v. Tallentire*, 477 U.S. 207, 106

S.Ct. 2485, 91 L.Ed.2d 174 (1986); *Director OWCP v. Perini North River Associates, et al*, 459 U.S. 297, 108 S.Ct. 634, 74 L.Ed.2d 465 (1983); *Executive Jet, supra.*

A drilling contractor with rigs in the Gulf of Mexico and the Pacific Ocean has no assurance of the status his workers occupy, whether they are covered by the Jones Act or the LHWCA, and, ultimately, what insurance he needs to buy to cover losses which result from that activity.

Jones Act litigation is a significant portion of the docket of Louisiana and Texas courts, federal and state. Insofar as this issue is concerned, those states may as well have seceded from the Union.

The facts of this case, in particular, cry out for a uniform national rule, without which a federal district court cannot, with any confidence, state the "American law" which applies to a foreign transaction alleged to be maritime in nature. For this reason, Petitioner prays for relief consisting of this Court's reversal of the decision of the Fifth Circuit insofar as it finally determines Wilander to have status under the Jones Act, and remand of the case for further consideration of any other claim Wilander may have.

Respectfully submitted,

VOORHIES & LABBE'
(A LAW CORPORATION)

BY: /s/ James B. Doyle
JAMES B. DOYLE
700 St. John Street
Lafayette, LA 70501
Phone: (318) 232-9700

Counsel for Petitioner,
McDermott International, Inc.

No. 89-1474

In The

Supreme Court of the United States

October Term, 1990

McDERMOTT INTERNATIONAL, INC.,

Petitioner,

vs.

JON C. WILANDER,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR RESPONDENT

J. B. JONES, JR.
JENNIFER JONES BERCIER
JONES, JONES & ALEXANDER
P. O. Drawer M
Cameron, LA 70631
Telephone: (318) 775-5714
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

STATEMENT OF THE CASE

The following statement of the case is deemed necessary by respondent to correct inaccuracies and omissions from the statement propounded by petitioner.

First of all, it should be noted that, at the time of Mr. Wilander's injury in 1983, petitioner McDermott International, Inc. maintained its principal place of business in New Orleans, Louisiana. (RI Vol. 5, pp. 5, 6). At the time that Wilander began his employment with McDermott International, and signed his contract for employment in New Orleans, that company was a wholly-owned subsidiary of McDermott, Inc., an American corporation. (RI Vol. 5, pp. 5, 11, 18).

Jon Wilander is and has always been an American citizen. (RI Vol. 6, p. 4). Following his employment with McDermott International, he was issued a seaman's card and a passport. (RI Vol. 6, pp. 7, 9, Pl. Ex. Vol. 6, pp. 8, 9; J.A. 156, 44). He worked ninety-day hitches in the Persian Gulf, always as a paint supervisor on a project involving a derrick barge or a derrick barge and a paint boat. (RI Vol. 6, p. 72). All of the work performed by Mr. Wilander was done over water in the Persian Gulf, out of sight of land. He had no shoreside duties. (RI Vol. 6, p. 73). He was denominated as a member of the crew of the Derrick Barge 9 by the captain of that vessel. (RI Vol. 9, pp. 419-420).

Wilander's employer assigned him to various vessels serving as paint boats throughout the tenure of his employment, the last of which was the *M/V GATES TIDE*. (RI Vol. I, 382, 388, Vol. 6, 31, 48). During a typical operation, Wilander would supervise the loading of the paint boat from a supply vessel. (RI Vol. 6, 33). He would give the captain of the paint boat instructions as to their destination. Upon arrival at the platform to be painted, Wilander would direct the captain as to where to position the boat so that the equipment aboard could be utilized properly. (RI Vol. 7, 34). All equipment needed to perform the painting and sandblasting operations of Wilander's

crew was kept aboard the paint boat, including compressors, sandblasting pot, paint pots, cargo containers, pallets, air supply and tools. (RI Vol. 6, 40-41).

The paint boat had to be positioned in such a manner that the hoses located on the vessel could reach the work area on the platform, since the air supply and compressor remained on the boat at all times. Wilander conducted his supervision of these operations from the deck of the paint boat. (RI Vol. 6, 41). Wilander testified that he spent ninety per cent of his time during his tenure of employment with McDermott working either aboard the Derrick Barge 9 or the vessel to which he was assigned as a paint boat. (RI Vol. 6, 93)

The mission of the *GATES TIDE* was to serve as a paint boat, to accommodate the painting/sandblasting crew. The vessel is referred to as a paint boat by McDermott in their daily job reports for the period just prior to Wilander's injury. (J.A. 174). The work of the paint crew could not be performed without the vessel. (RI Vol. 6, pp. 26-28, 30-32, Vol. 9, p. 389).

Wilander was injured when a line he was checking for leaks aboard a small platform exploded. He was not informed that the line was being hydrotested at the time, due to a failure of communication among the McDermott supervisors, located miles away over open sea. (RII Vol. 13, pp. 292-94, 95, Vol. 14, p. 537, Vol. 13, p. 306).

Petitioner's recitation of the course of proceedings below, including the repeated attacks of McDermott on Mr. Wilander's status, is correct. The jury in this case found that Wilander was substantially connected to *and* contributed to the mission of both the Derrick Barge 9 and the *GATES TIDE*. The Fifth Circuit affirmed the factual findings of the lower court.

> In this case the evidence established that the plaintiff performed a substantial part of his work, directing the sandblasting and painting of fixed platforms, from the *GATES TIDE*. Further, the *GATES TIDE* functioned as a paint boat.

> Consequently, the plaintiff's duties contributed to the function of the vessel. There was, therefore, sufficient evidence to support the jury's finding that the plaintiff had status as a seaman. 887 F.2d at 90.

In dicta, the court noted (at 887 F.2d 90, n.1) that Wilander would not qualify as a seaman under the test of *Johnson v. John F. Beasley Construction Co.*, 742 F.2d 1054 (7th Cir. 1984), although Wilander testified that he aided in navigation and on occasion actually steered the vessel. (RI Vol. 6, pp. 178-180; Vol. 8, p. 284; Pl. Ex. 16 & 17, Vol. 6, p. 54; J.A. 168).

SUMMARY OF THE ARGUMENT

Both prior and subsequent to the passage of the Jones Act, 46 U.S.C. 688, American courts have broadly interpreted the requirement that a seaman "aid in navigation" of the vessel to which he has attached.

This interpretation is in keeping with the broad purposes of the Act, which is designed to protect employees who are required to work in a hazardous maritime environment.

The test of seaman status set forth by the Fifth Circuit in *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959) is an accurate synthesis of the guidelines established by the United States Supreme Court and serves to further the purposes of the Jones Act.

Both Congress and the Supreme Court have expressed the intention to provide coverage under the Jones Act for employees such as Wilander, who work aboard special purpose vessels engaged in offshore oil production.

The Seventh Circuit rule of seaman status set forth in *Johnson v. John F. Beasley*, supra, not only is in direct and irreconcilable conflict with prior decisions of this court, but thwarts the policy behind the Jones Act.

The Supreme Court should adopt a uniform rule for seaman status which grants Jones Act remedies to all workers who contribute to the economic viability and mission of the vessel to which they are assigned.

ARGUMENT

I. EARLY DEVELOPMENT AND EROSION OF THE "AID TO NAVIGATION" REQUIREMENT FOR SEAMAN STATUS

The evolution of admiralty doctrine in the American courts has a history as long and varied as that of our country itself. The current state of technology found in modern maritime commerce is, indeed, far removed from the sailing ships familiar to our nineteenth century forefathers. It is this continuous process of technological evolution which has been the basis for and the policy behind the concurrent growth and development of the rights of the American seaman.

In the days of the tall ships, the concept developed that a seaman's remedies should be reserved only to those able to "hand, reef and steer", which was considered "the ordinary test of seamanship". *The CANTON*, 5 F. Cas. 29, 30 (D. Mass. 1858) (No. 2,388). Application of this archaic formula led to different status classifications for employees aboard the same vessel. For example, the court in *Black v. The LOUISIANA*, 3 F.Cas. 503 (D.Pa. 1804)(No. 1,461) distinguished between the cook and the steward and "mariners employed in navigating the vessel."

With the advent of the steam-powered vessel, the doctrine began the process of alteration to meet the changing needs of the industry. Engerrand and Bale, "Seaman Status Reconsidered", 24 S.Tex.L.J. 431, 432 (1983).

> A great change has taken place in the last half century in the functions of seamen on steamboats. Long after steam had become the main motive power, ocean-going ships were equipped with masts and sails, which were frequently used to supplement the steam. The deck hand was a sailor as well as a seaman. He had to understand how to handle the rigging of a ship and know the technique of his calling. Now, as has been frequently pointed out, the steamships make practically no use of sails and the seaman is mainly occupied in cleaning the decks, polishing the brasses, and acting as lookout. Comparatively few men are needed for this purpose, and it is not especially important that they should either be able to understand the officers or that they should have had experience in their calling in normal times.
>
> H. Farnam, The Seamen's Act of 1915, S.Doc. No. 333, 64th Cong., 1st Sess. 13 (1916).

The often-quoted statement that a seaman must "aid in navigation" of the vessel appears to have originated in *The BOUND BROOK*, 146 F. 160, 164 (D.Mass. 1906). This case was a libel for wages brought by certain foreign seamen and firemen who served aboard a German vessel but signed their articles in this country. The issue was whether the court would decline to assert admiralty jurisdiction over the claim in deference to a treaty between the United States and Germany which reserved to the German consul in the United States the "exclusive power to . . . determine differences of every kind . . . between the captains, officers and crews . . . specifically in reference to wages." *The BOUND BROOK*, supra at 160. In this context, the court determined that the "seaman and firemen" were members of the crew, and therefore declined to accept jurisdiction. In interpreting the treaty provision, the court noted, "When the 'crew' of a vessel is referred to, those persons are naturally and primarily meant who

are on board her aiding in her navigation, without reference to the nature of the arrangements under which they are on board."

Engerrand and Bale note that "(t)he 'aid in navigation' test was subtly modified almost from its inception". Supra at p. 433. It is doubtful if this term was ever used in the context intended by the author of *The BOUND BROOK*; "naturally and primarily meant" became "naturally and primarily on board aiding in navigation".

Even earlier cases took a broader view of the "aid to navigation" requirement and expanded the definition of a seaman far beyond those who "hand, reef and steer."

For example, in *The OCEAN SPRAY*, 18 F.Cas. 558 (D.Ore. 1876) (No. 10,412), another libel for wages was brought by certain Indians who were taken aboard a vessel about to go on a voyage for the purpose of hunting fur seals. The Indians were to serve as "sealers" and actually take the animals. Since the Indians could not speak English, the vessel employed interpreters, who also joined in the claim for wages. However, the voyage was abandoned before any seals were taken, and the vessel opposed the claim on the ground that neither the sealers nor the interpreters had ever served as "mariners" on the voyage. But the court disagreed, reasoning that all who were "co-laborers in the leading purpose of the voyage", should be entitled to the same benefits. Supra at 560.

> . . . A principle of law, as that the persons on a vessel who are employed in promoting the purpose of the voyage or aiding in her navigation shall have a lien upon her for their wages, must be applied to new cases within the reason of the rule, as they arise.
>
> . . . (T)here are other functions besides these of mere navigation, and they are performed by men who know nothing of seamanship – and in the great invention of modern times, the steamboat, an entirely new set of operatives, are employed, yet at all times and in all countries,

> all the persons who have been necessarily or properly employed in a vessel as co-labourers to the great purpose of the voyage, have, by the law, been clothed with the legal rights of mariners – no matter what might be their sex, character, station, or profession.
>
> E. Benedict. *The American Admiralty, Its Jurisdiction and Practice*, 7th Ed. (1850), Sec. 241 at 134.

Other cases employing a similar line of reasoning are collected by Engerrand and Bale,"Seaman Status Reconsidered", 24 S.Tex.L.J. 431, 434 n.20 (1983) including *Saylor v. Taylor*, 77 F. 476, 479 (4th Cir. 1896), finding that seamen included all who were "employed in any capacity and whose labor contributes in any degree, however slight, to the accomplishment of the main object in which the vessel is engaged". Saylor relied in part on the definition of "seaman" found in Section 4612 of the Revised Statutes, to-wit:

> In the construction of this title every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof, and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'.

See also *The J. S. WARDEN*, 175 F. 314, 315 (S.D.N.Y. 1910) (which holds that a seaman is one who "further(s) the purpose of (the ship's) voyage") and *The MINNA*, 11 F. 759, 760 (E.D. Mich. 1882)(a seaman is one who acts in "furtherance of the main object of the enterprise in which (the vessel) is engaged").

In *The BUENA VENTURA*, 243 F. 797 (S.D.N.Y. 1916), the court was called upon to determine if a "wireless operator" aboard a vessel should be considered a seaman. The court discussed prior jurisprudence, most notably *The BOUND BROOK*, 146 F. 160 (D.Mass. 1906) and *United States v. Winn*, 3 Sumn. 209, Fed. Case No. 16,740

(wherein Justice Story found the term "crew" equivalent to the ship's company).

> The word "seaman" undoubtedly once meant a person who could "hand, reef and steer", a mariner in the true sense of the word. But as the necessities of ships increased, so the word "seaman" enlarged its meaning . . . But the reason of the matter is shown best by Judge Benedict's decision in *The NORTH AMERICA*, 5 Ben. 486, Fed. Cas. No. 10,314, wherein he held that a fireman was a seaman. The reason for such generous interpretation of so simple a word as "seaman" is that every one is entitled to the privilege of a seaman who, like seaman, at all times contribute to and labor about the operation and welfare of the ship when she is upon a voyage. When mariners in the old sense of the term were the only persons who enabled the ship to go in safety, then they were the only seamen; when firemen contributed quite as much as the deck hands to that end, they became seamen in the eye of the law. And in my judgment a wireless operator is to-day a far more important person in the safe operation of a voyaging vessel than is any one imaginable fireman, cook or the like.
>
> 243 F. at 799.

By the early twentieth century, such workers as bartenders, horsemen, muleteers, coopers, pursers, cooks, stewards, engineers, divers, clerks and others had been held to be seamen. See Engerrand and Bale, "Seaman Status Reconsidered", 24 S.Tex.L.J. 431 (434-435, notes 29, 30 (1983)).

II. DEVELOPMENT OF STATUTORY REMEDIES FOR MARITIME WORKERS

In 1903, the United States Supreme Court in *In re The OSCEOLA*, 289 U. S. 158, 23 S.Ct. 483, 47 L.E. 760 (1903), held that all members of the crew of a vessel were to be

considered fellow servants. Therefore, a seaman was precluded under the law from recovering for injuries sustained because of the negligence of another crewman.[1]

In response to this decision, and to the sinking of the *TITANIC* in April of 1912, Congress passed the Merchant Marine Act of 1915. 38 Stat. 1164. Section 20 of the Act attempted to overrule the above-referenced portion of The OSCEOLA by providing, "That in any suit to recover damages for any injury sustained on board a vessel or in its service, seamen having command shall not be held to be fellow-servants with those under their authority." 38 Stat. 1164, 1185. However, the efforts of Congress proved to be inadequate in this regard, since the Supreme Court held in *Chelentis v. Luckenbach Steamship Co. Inc.*, 247 U.S. 372, 38 S.Ct. 501, 62 L.E. 1172 (1918) that the seaman still had no negligence remedy against his employer; therefore, abrogation of the fellow servant rule was not enough to give the seaman a remedy for injuries sustained due to the torts of his co-workers. To legislatively overrule *Chelentis*, Congress passed The Merchant Marine Act of 1920, or the Jones Act, 41 Stat. 988, codified at 46 U.S.C. 688 (1976), and granted a negligence action to "any seaman".

Seven years intervened between the passage of the Jones Act and the enactment by Congress of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, 33 U.S.C. 901-50 (1976), establishing a federal compensation scheme for land-based maritime workers. Prior to passage of the LHWCA, the Supreme Court repeatedly struck down attempts to apply state workman's compensation schemes to longshoremen, who were considered maritime workers and whose claims came within the admiralty jurisdiction of the

---

[1] The court did hold that the seaman would be entitled to maintenance and cure for such injuries. 189 U. S. at 175.

court. See *Atlantic Transport Co. of W. Virginia v. Imbrovek*, 234 U.S. 52, 34 S.Ct. 733, 58 L.E. 1208 (1914); *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.E. 1085 (1917); *Knickerbocker Ice Co. v. Stewart*, 252 U.S. 149, 40 S.Ct. 438 (1920); *Washington v. W. C. Dawson & Co.*, 264 U.S. 219, 44 S.Ct. 302, 68 L.E. 646 (1924).

Each case reasoned that the maritime law was exclusively federal domain, and that no state should be permitted to alter the maritime law. It was during this period that the United States Supreme Court held, in *International Stevedoring Co. v. Haverty*, 272 U.S. 50, 47 S.Ct. 19, 71 L.E. 157 (1926), that a longshoreman was a seaman within the meaning of the Jones Act. The plaintiff in that case was a longshoreman injured while working aboard a vessel which was moored to a dock. He brought suit under the Jones Act against his employer, a stevedoring company. The Court adopted an expansive test for seaman's status, holding, at 272 U.S. 52:

> It is true that for most purposes, as the word is commonly used, stevedores are not "seamen". *But words are flexible.* The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. *The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of business. If they should be protected in the one case they should be in the other. In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less than a century, we are of opinion that a wider scope should be given to the words of the act*, and that in this statute "seamen" is to be taken to include stevedores employed in

> maritime work on navigable waters as the plaintiff was, whatever it might mean in laws of a different kind.[2]
>
> (emphasis added)

Following the *Haverty* decision, Congress passed the LHWCA. The compensation scheme established thereunder was deemed the exclusive remedy for the injured worker as against his employer, if the worker was injured "upon the navigable waters of the United States (including any dry dock)." 33 USC 903(3) (a). The Act excluded from its coverage "a master or member of a crew of any vessel". 33 USC 903(3), 903(a) (1).[3]

The relationship between the Jones Act and the LHWCA was addressed by this court in the case of *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 66 S.Ct. 869, 90 L.E. 1045 (1946). The claimant was a longshoreman who sought to sue his employer under the Jones Act, as in the *Haverty* case. However, unlike *Haverty*, the plaintiff in this case was injured while off the vessel, on a pier. The Court concluded that the enactment of the LHWCA following the *Haverty* case dictated the result that Jones Act remedies would be reserved to "the members of the crew of a vessel plying in navigable water" and longshoremen would receive "only such rights to compensation as are given by the Longshoremen's Act". *Swanson v. Marra Brothers, Inc.*, supra at 7. However, since Swanson was

---

[2] Professor Robertson notes that "The *Haverty* holding that longshoremen injured on water were Jones Act "seamen" was followed in several other Supreme Court decisions arising between 1920 and 1927." Robertson, "A New Approach to Determining Seaman Status", 64 Texas L.R. 79, 85 (1985).

[3] The constitutionality of both the Jones Act and the LHWCA was upheld by the Supreme Court. *Panama R.R. v. Johnson*, 264 U.S. 375, 44 S.Ct. 391, 68 L.E. 748 (1924) and *Crowell v. Benson*, 285 U.S. 22, 52 S.Ct. 285, 76 L.E. 598 (1932).

injured on the dock, he was not covered under the LHWCA, and could only resort to whatever remedies were accorded by state law.

Professor Robertson notes that there still exists an area of overlapping coverage between the Jones Act and LHWCA:

> The theoretical mutual exclusivity of the Jones Act and LHWCA does not invariably prevent marginal workers from access to both systems. E.g., *Simms v. Valley Line Co.*, 709 F.2d 409, 411 (5th Cir. 1983); *McDermott, Inc. v. Boudreaux*, 679 F.2d 452, 459 (5th Cir. 1982). The 1984 amendments to LHWCA appear to recognize the functional overlap between the two systems in an uncertain zone at their intersection, by enacting a new § 903(e) that requires a credit against LHWCA recovery in the amount of any seamen's benefits received by the worker. 1984 U.S. Code Cong. & AD. News (98 Stat.) at 1641.
>
> Robertson, supra p. 86, n. 40.

We would note at this point that in *Pizzitola v. Electro-Coal Transfer Corp.*, 812 F.2d 977 (5th Cir. 1987), the Fifth Circuit affirmed the granting of a judgment notwithstanding the verdict by a lower court holding that, as a matter of law, a harbor-bound employee engaged in an occupation specifically enumerated in the LHWCA is not a seaman under the Jones Act, and that an analysis of status under *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959), is unnecessary once it is determined that the harbor-worker's job is so classified under the Act.

Pizzitola was flatly repudiated by the Fifth Circuit in *Legros v. Panther Services Group, Inc.*, 863 F.2d 345 (5th Cir. 1988). That case involved a ship repairman (an occupation specifically enumerated in the LHWCA). The court held that the *Robison* test is still the standard for reviewing LHWCA and Jones Act determinations; and that *Pizzitola* was correct on the facts of that case, but incorrect in its analysis. However, the *Legros* panel opinion was

vacated when the case was settled subsequent to granting of rehearing en banc.

The Fifth Circuit has emasculated *Pizzitola* in subsequent decisions, including *Leonard v. Dixie Well Service & Supply*, 828 F.2d 291 (5th Cir. 1987), wherein the court observed that the result in *Pizzitola* was based on the fact that the claimant was a ship repairman who indisputably spent 75 per cent of his work time ashore. In *Thibodeaux v. Torch, Inc.*, 858 F.2d 1048 (5th Cir. 1988), the plaintiff was injured while working on shore loading pipe onto a barge. The trial court granted summary judgment against the plaintiff on the issue of Jones Act status, relying on *Pizzitola*. However, the Fifth Circuit reversed, holding that the trial court misinterpreted *Pizzitola* by looking only at the plaintiff's job at the time of his injury. Since the worker usually spent most of his time as a vessel-based crane operator, denial of status via summary judgment was inappropriate.

According to this Court, the 1972 amendment to the LHWCA which added the status requirement was meant only to expand shoreside coverage. Coverage on the water side of the shorelines was unchanged by those amendments. *Director, OWP, USDL v. Perini North River Assoc.*, 459 U.S. 297, 103 S.Ct. 634, 74 L.E.2d 465 (1983). Therefore, any assertion that the 1972 amendments should serve as the basis for modification of Jones Act coverage is without merit.

III. SUPREME COURT INTERPRETATION OF SEAMAN STATUS

Beginning in the 1940's, the Supreme Court began a two-decade long process of gradually defining the parameters of seaman status under the Jones Act. Our analysis begins with the case of *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 60 S.Ct. 544, 84 L.E. 732 (1940). In order to properly understand the court's holding in that case, the context in which it arose must be examined.

The claimant worked aboard a lighter and his job was to facilitate the flow of coal from the lighter to the vessel which was being fueled. Following his injury, he brought suit, not under the Jones Act, but to recover benefits under the LHWCA. The Deputy Commissioner ruled that the claimant was entitled to LHWCA benefits and not a "member of a crew" within the meaning of that Act. The Court of Appeals reversed but the Supreme Court reinstated the Deputy Commissioner's ruling. This case arose before the Court had held that the Jones Act and the LHWCA were (at least theoretically) mutually exclusive.[4]

Next before the Court was *Norton v. Warner Co.*, 321 U.S. 565, 64 S.Ct. 747, 88 L.E. 931 (1944), which significantly expanded the definition of a seaman. The claimant was a handyman employed to take care of a barge docked at a pier. The vessel never went to sea and did not have its own means of propulsion. The injured worker filed for LHWCA benefits and was found to be within the Act by the Deputy Commissioner, but the court of appeal reversed, holding that the worker was a member of a crew of a vessel, thereby excluded from coverage. The

---

[4] See discussion of *Swanson*, infra at pp. 11-12. Professor Robertson analyzes *Bassett*'s holding that the claimant was not a seaman as follows (at p. 86, citations omitted, footnotes omitted):

> The major thrust of the Court's opinion was deference to the administrative tribunal's finding that the worker was not excluded from LHWCA coverage by the "member of a crew" language. The Court emphasized that crew member status is ordinarily a question of fact and that the administrator's finding of LHWCA coverage was conclusive if evidence supported it. Cautioning that its holding construed only the LHWCA, and not "other statutes having other purposes," the Court defined crew members as "those employees on the vessel who are naturally and primarily on board to aid in her navigation."

Supreme Court, as per Mr. Justice Douglas, found that Rusin, the claimant, "had that permanent attachment to the vessel which commonly characterizes a crew," (at 321 U.S. 573) and specifically repudiated the idea that the "aid in navigation" requirement for status should be given the restrictive interpretation advanced by petitioner in the case sub judice.

> If a barge without motive power of its own can have a "crew" within the meaning of the Act and if a "crew" may consist of one man, we do not see why Rusin does not meet the requirements. A barge is a vessel within the meaning of the Act even when it has no motive power of its own, since it is a means of transportation on water.[4] A crew is generally "equivalent to ship's company" as Mr. Justice Story said in *United States v. Winn*, Fed. Cas. No. 16,740, 28 Fed. Cas. 733,737. But we pointed out in the *Bassett* case that the word does not have "an absolutely unvarying legal significance." 309 U. S. at p. 258. *We said in the Bassett case that the term "crew" embraced those "who are naturally and primarily on board" the vessel "to aid in her navigation."* Id., p. 260. *But navigation is not limited to "putting over the helm." It also embraces duties essential for other purposes of the vessel. Certainly members of the crew are not confined to those who can "hand, reef and steer."* Judge Hough pointed out in *The BUENA VENTURA*, 243 F. 797, 799, that "every one is entitled to the privilege of a seaman who, like seamen, at all times contributes to the labors about the operation and welfare of the ship when she is upon a voyage." And see *The MINNA*, 11 F. 759; *Disbrow v. Walsh Bros.*, 36 F. 607, 608 (bargeman). We think that "crew" must have at least as broad a meaning under the Act.
>
> *(Rusin's duties) were indeed different from the functions of any other "crew" only as they were so*

by the nature of the vessel and its navigational requirements.

---

[4] "Vessel" is defined in R.S. § 3, to include "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

(Additional footnotes omitted.) (Citations omitted) (emphasis added)

It is important to note, in examining the relationship between the *Bassett* and *Norton* decisions, that the comments of the Court in *Bassett* regarding the "aid in navigation" requirement were restricted to the context of LHWCA status. On the other hand, the more expansive holding of *Norton*, to the effect that a seaman is anyone aboard contributing to the vessel's operation and welfare during a voyage, was specifically directed to Jones Act coverage. Robertson, supra at 87-88.

The requirement that a seaman be affiliated with a vessel "in navigation" was developed by *Desper v. Starved Rock Ferry Co.*, 342 U. S. 187, 72 S.Ct. 216, 96 L.E. 205 (1952). The defendant employer in that case operated a small fleet of sightseeing boats which were put up on blocks for the winter months. The vessels would be overhauled in the spring of each year in anticipation of their use during the summer. Plaintiff was injured while making repairs during the off-season. Although the Court again stressed that the question of seaman status is almost always for the trier of fact (Id. at 190), status was denied in this case because all boats were "laid up for the winter." Id at 191.[5]

---

[5] Professor Robertson summarizes the development of the "vessel in navigation" requirement at p. 88, n. 33 (Citations omitted):

(Continued on following page)

Following *Desper*, the state of the law on seaman status as set forth by the United States Supreme Court may be summarized as follows:

(1) In almost all cases, the determination of whether or not a worker should be classified as a seaman should be made by the trier of fact. *Bassett*, at 251 U.S. 257-58; *Norton*, at 321 U.S. 568-69; *Desper*, 342 U.S. at 190.

(2) In order to be a seaman, a worker must be aboard the vessel for the purpose of contributing to her operation and welfare during a voyage. *Norton*, at 321 U.S. 572.

(3) To be accorded seaman status, the worker must have a permanent attachment to a vessel. Id.

(4) Finally, the vessel to which the alleged seaman is attached must be "in navigation." *Desper*, 342 U.S. at 191.

Once the basic requirements had been delineated by the above cases, only four United States Supreme Court cases have arisen in which these provisions were applied. The result in each case totally repudiates the restrictive approach to status espoused by petitioner.

The first was *Gianfala v. Texas Co.*, 350 U.S. 879 (1955). This was the first case to bring before the Court the unique facts presented by offshore oil production in the Gulf of Mexico. The plaintiff worker died in an accident

---

(Continued from previous page)

The "vessel in navigation" criterion, derived in large part from *Desper*, has been construed in a number of subsequent decisions. A vessel remains in navigation even though it is stationary for a lengthy period, drilling for oil, supporting a crane, engaging in construction activities and the like. It is not out of navigation while working. A vessel is taken out of navigation only when removed from service for extensive repairs or reconstruction.

which occurred while he was unloading pipe from a vessel onto a drilling barge.

The plaintiff had been assigned to work on the drilling barge during a schedule of six days on and six days off. He and his fellow crewmen were paid by the hour and slept on shore every night. The conditions of plaintiff's employment did not require him to stay aboard the drilling barge for any specified period of time. This worker had no duties in connection with the moving of the barge, which was done only about once a year. There were no navigation lights aboard the barge and at the time of the accident it had been sunk, and was resting on the bottom of the Gulf of Mexico while drilling operations were being conducted. At the close of the evidence, the defendant employer moved for a directed verdict on the ground that the plaintiff could not be considered a seaman and a member of the crew of a vessel plying on navigable waters in furtherance of commerce, but was instead a member of a drilling crew, using the sunken and secured barge as a part of the equipment for drilling an oil well. The lower court denied the motion, but the court of appeal reversed. *Texas Co. v. Gianfala*, 222 F.2d 382 (5th Cir. 1955). The Fifth Circuit reasoned that (1) the worker was not aboard a vessel in navigation and (2) he was not on board in aid of navigation.

> On the contrary he was aboard it, not as a member of a ship's crew but as a member of a drilling crew. He was then and there doing work which is done strictly and only by oil field workers, handling the tubing to be used in completing the well and he was certainly not a 'seaman in being.' (222 F.2d 387).

But the Supreme Court reversed and directed that the judgment of the lower court be reinstated, citing *Bassett*, supra, and the cases of *Summerlin v. Massman Construction Co.*, 199 F.2d 715 (4th Cir. 1952); *Wilkes v. Mississippi River*

Sand & Gravel Co., 202 F.2d 383 (6th Cir. 1953); and *Gahagan Construction Corp. v. Armao*, 165 F.2d 301 (1st Cir. 1948). The significance of the holdings of these cases is discussed infra, at p. 26.

The next case to be considered was *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370, 77 S.Ct. 415, 1 L.E.2d 404 (1957). In this case, the worker was a handyman aboard a dredging barge. The appellate court characterized him as an employee whose primary duties were to load supplies on the vessel while she was at anchor, and to perform incidental tasks of the character of common labor. The jury found that the plaintiff was a seaman under the Jones Act, but the court of appeal reversed. The Supreme Court reinstated the findings of the jury, holding

> We believe, however, that our decision in *South Chicago Co. v. Bassett*, supra, has not been fully understood. Our holding there that the determination of whether an injured person was a "member of a crew" is to be left to the finder of fact meant that juries have the same discretion they have in finding negligence or any other fact. The essence of this discretion is that a jury's decision is final if it has a reasonable basis, whether or not the appellate court agrees with the jury's estimate.
>
> Because there was testimony introduced by petitioner tending to show that he was employed almost solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have a significant navigational function when the dredge was put in transit, we hold there was sufficient evidence in the record to support the finding that petitioner was a member of the dredge's crew. Cf. *Gianfala v. Texas Co.*, 350 U.S. 879, reversing 222 F.2d 382. Accordingly, we reverse the decision below.

Senko v. LaCrosse Dredging Corp., supra at 374.

Writing not long after this opinion was rendered, two commentators expressed the significance of this decision as follows:

> But the real significance of *Senko* seems to lie in the following:
>
> (A) The extent to which the Court went in finding a sufficiency of evidence as to Senko's being a member of a crew to warrant sending the case to the jury; and
>
> (B) The very strong trend apparent in the opinion to de-emphasize the importance of evidence as to actual "aiding in navigation" as a factor in deciding whether or not the claimant is "a member of a crew".
>
> Gisevius and Leppert, "Modern Maritime Workers", 9 Loyola L.Rev. 1, 7 (1957-58).

These writers went on to note:

> Certainly *Senko* stands for a final abandonment of the very narrow definition of the phrase "member of a crew" as conceived by the decisions of various Circuit Courts of Appeal quoted by the Supreme Court in *Bassett*, supra.

To sum up on the evolution of *Senko*, therefore, we find that the Supreme Court, by reversing the Fifth Circuit in *Gianfala*, allowed the Jones Act to apply to a man who, under no conceivable stretch of imagination could be said to be employed "primarily in aid of navigation" to come under the Jones Act. The other three distinctly sublimated this test to the extent we have shown. Moreover, even in *Bassett*, it is debatable whether or not the phrase was mere dicta, as the case actually turned upon whether or not there were sufficient facts to justify a holding by the commissioner that the Longshoremen's Act was the proper remedy, and was, of course, no attempt by the Supreme Court to actually weigh the facts.

Next we find the Supreme Court reversing the Supreme Court of Illinois in *Senko* in a case where there could be no serious pretense that the employee was aboard the dredge "primarily in aid of navigation" and to reach this conclusion the Court sublimated the navigational aspects of the employment and emphasized the connection with the vessel. Moreover, in so doing, the court expressly relied upon *Gianfala*. Gisevius and Leppert, supra at 8, 14.

With the benefit of thirty years of hindsight, Professor Robertson agrees with these conclusions:

> *Senko* puts an important gloss on the *Bassett-Norton-Depser* line of cases. It clearly negates the existence of any requirement that a seaman be aboard the vessel "naturally and primarily in aid of navigation," unless the term "navigation" is to be tortured into "maintenance during indefinitely extended anchorage." It shows that a vessel can be immobile for a very long period of time and still be considered "in navigation." Most importantly, it establishes that the status issue should reach the jury in all but the clearest cases.
>
> Robertson, supra at 90.

The following year, the Court decided *Grimes v. Raymond Concrete Piling Co.*, 356 U.S. 252, 78 S.Ct. 687, 2 L.E.2d 737 (1958). The plaintiff was employed as a pile driver in the construction of a "Texas Tower", which was a platform destined to serve as a permanent offshore radar installation. The tower was towed to its destination 110 miles offshore, and the plaintiff lived and worked aboard it while it was in transit. The plaintiff also engaged in pile driving operations to secure the tower to the ocean floor. Six days after the securing of the tower was completed, plaintiff went to work on a construction barge for a few hours and was injured while being transferred back to the tower in a life ring. The Supreme Court held that these facts presented a jury question as to

whether the plaintiff was a seaman under the Jones Act, citing *Senko, Gianfala* and *Bassett*.[6]

The last Supreme Court case to directly address the issue of seaman status was *Butler v. Whiteman*, 356 U.S. 281, 78 S.Ct. 734, 2 L.E.2d 754 (1958). The injured worker was a laborer employed by the defendant, who owned a wharf, barge and tug, all of which were lashed together. The tug had been withdrawn from navigation due to its inoperability and was undergoing a general overhaul. On the date of his death, he had been assigned to clean the tug's boilers. The Supreme Court held that there was an evidentiary basis for jury findings that the vessel was in navigation, and that the plaintiff was a seaman as to the tug boat.

The impact of these decisions may be summarized as follows:

> . . . The most significant thread is the Court's firm assignment of the vast majority of status determinations to the trier of fact . . .
>
> Some important criteria were identified. The decisions through *Senko* suggest that a worker is covered by the Jones Act and

---

[6] Professor Robertson notes, at p. 91, n. 74:

> 74. The usual interpretation of *Grimes* – attributing seaman status to plaintiff's brief connection with the construction barge – is not a universal interpretation. For instance, Judge Brown, dissenting in *Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337, 342 (5th Cir. 1982), cert. denied, 461 U.S. 958 (1983), read *Grimes* as attributing Jones Act "vessel" status to the Texas Tower, 692 F.2d at 342; see also *Simko v. C & C Marine Maintenance Co.*, 594 F.2d 960, 970 (3d Cir.)(Gibbons, J., dissenting)(apparently reading *Grimes* to have treated the Texas Tower as a "vessel"), cert. denied. 44 U.S. 833 (1979).

excluded from LHWCA if he has a permanent attachment[76] to a vessel in navigation[77] and performs work principally devoted to the operation and welfare of the vessel.[78] The per curiam decisions suggest that "permanent attachment" is not an invariable requirement,[79] that "vessels" include special-purpose structures not usually thought of as vessels but designed to float and move from time to time on navigable water,[80] and that a vessel can be "in navigation" although inoperable for a lengthy period undergoing major rehabilitation.[81] The Court's guidance has thus been quite general; the task of specifying the limits of the suggested criteria has been left to the lower courts, assisted by the admonition that most status issues are questions of fact.

---

[76] *Norton*, 321 U.S. at 573.

[77] *Desper*, 342 U.S. at 191.

[78] *Senko*, 352 U.S. at 374; *Norton* 321 U.S. at 572.

[79] *Butler*, 356 U.S. at 271; *Grimes*, 356 U.S. at 252.

[80] *Gianfala*, 350 U.S. at 879.

[81] *Butler*, 356 U.S. at 271.

Robertson Supra, at pp. 91-92.

IV. DEVELOPMENT OF THE TEST FOR SEAMAN STATUS BY THE CIRCUIT COURTS

For the past thirty years, the task has fallen to the circuit courts to articulate a workable standard for seaman status which will be in accord with the guidelines established by the Supreme Court in the cases previously discussed. Not long after the Supreme Court's last pronouncement in *Butler*, supra, the Fifth Circuit, in which the majority of seaman's cases arise, established their test in the case of *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959).

The first thing to be noted about the *Robison* opinion is that it was written by Judge John Minor Wisdom, possibly the most distinguished jurist ever produced by the Fifth Circuit.[7] Judge Wisdom attained national prominence with his opinions in the field of civil rights but he is also highly revered in our area as the author of the definitive seaman status test he so meticulously set forth in this case. In this opinion, Judge Wisdom thoroughly reviews the history discussed in Part III. Every line of his carefully formulated holding is derived from Supreme Court authority.

Robison was a member of the lowest echelon of the oil field work force – a "roughneck" in a drilling crew aboard a mobile drilling platform, the Offshore No. 55. A roughneck's job includes all of the hardest manual labor necessary to complete the drilling and rigging of an oil well. The "Offshore No. 55" was a drilling rig mounted on a barge which, at the time of Robison's injury, was resting on the bottom of the Gulf of Mexico. The barge had no means of self-propulsion, but was towed to its intended location. Once in place, its retractable legs were lowered to the seabed and the deck of the barge was lifted above the water level by means of hydraulic jacks. Robison was injured when a forty-foot "joint" of casing, weighing 1620 pounds, broke loose and struck a section of pipe into which Robison's foot was lodged, severely fracturing his leg.

Robison sued his employer for negligence under the Jones Act; he also filed the traditional seaman's actions

---

[7] Judge Wisdom was the 1988 recipient of the Edward J. Devitt Distinguished Service to Justice Award. The text of the presentation, set forth at 888 F.2d XCIII-CXXIV, details Judge Wisdom's many accomplishments in the fields of civil rights, admiralty, evidence, labor law, antitrust and the Louisiana Civil Code.

for unseaworthiness and maintenance and cure. Offshore Company denied Robison's status as a seaman, alleging that he was a member of a drilling crew and had no duties in connection with the navigation, maintenance or operation of the Offshore No. 55. A jury returned a verdict in Robison's favor, after the lower court denied defense motions for directed verdict and judgment notwithstanding the verdict. Offshore Company appealed.

Judge Wisdom formulated the issues before the court as follows:

> (1) What is required in law to constitute a maritime worker a seaman and a member of a crew?
>
> (2) In the circumstances of this case, is the question one for the court or for the jury?
>
> Id. at 773, footnote omitted.

The court began its analysis with the basic principle that the Jones Act has always been interpreted broadly, citing *International Stevedoring Co. v. Haverty*, 272 U.S. 50, 47 S.Ct. 19, 71 L.Ed. 157 (1926). Following *Haverty*, with the enactment of the LHWCA, courts recognized that the Jones Act applied to "one who does any sort of work aboard a ship in navigation". *Robison*, supra at 774, citing *Carumbo v. Cape Cod S.S. Co.*, 123 F.2d 991, 995 (1st Cir. 1941). Judge Wisdom notes:

> Whatever may have been the original intention of Congress, courts have given an extremely liberal interpretation to the terms "seaman" and "member of a crew of any vessel" without provoking any congressional amendments restricting the coverage of the act.

Judge Wisdom next discusses *Gianfala v. Texas Company*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775 (1955), which he characterizes as "the key case in the conversion of offshore oil field workers into seamen". The four cases cited by the Supreme Court in its reversal of the holding that the member of a drilling crew was not a seaman

(*South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 60 S.Ct. 544, 84 L.E. 732 (1940); *Summerlin v. Massman Construction Co.*, 199 F.2d 715 (4th Cir. 1952); *Wilkes v. Mississippi River Sand & Gravel Co.*, 202 F.2d 383 (6th Cir. 1953) and *Gahagan Construction Corp. v. Armao*, 165 F.2d 301, 305 (1st Cir. 1948)) are carefully considered by the court to determine their "common denominators" which were:

> (1) The claimants are not ordinarily thought of as "seamen" aboard "primarily in aid of navigation", although they may serve the vessel in the sense that the work they perform fits in with the function the vessel serves. Gianfala was a member of a drilling crew on a submersible barge, Summerlin a fireman on a derrick, Wilkes a common laborer on a dredge, Gahagan a deckhand on a dredge. They had absolutely nothing to do with navigation, as such, nothing to do with the operations or welfare of a vessel in the sense that a vessel is a means of transport by water, and were not members of a ship's company in the sense that ship's cook or carpenter are necessary or appropriate members of a ship's complement. *But in the light of the function or mission of the special structure to which they were attached, they served in a capacity that contributed to the accomplishment of its mission in the same way that a surgeon serves as a member of the crew of a floating hospital.* The Bassett decision is the only one of the four cited in which there was judicial sanction of the requirement that the Jones Act seaman must be aboard "primarily in aid of navigation", and in that case the question at issue was the sufficiency of the evidence to justify a holding under the Longshoremen's Act. (2) The "vessels were not conventional vessels but special-purpose structures that in one case was on the bottom of the sea.
> In other words, under the Jones Act a vessel may mean something more than a means of transport on water.
> *Robison*, supra at 776, footnote omitted.

Discussion of the *Senko* case leads Judge Wisdom to the conclusion that the attributing of seaman status to a handyman aboard a dredge constituted further erosion of a strict construction of the phrase "aboard naturally and primarily in aid of navigation". *Robison*, supra at 777. This conclusion is also consistent with the Supreme Court's holdings in *Grimes* and *Butler*, supra.

Turning to the question of who should be allocated the duty of determining the status, Judge Wisdom finds ample support for his conclusion that the issue is primarily one of fact, to be taken from the jury only when there is no reasonable evidentiary basis to support a finding of seaman status. *Robison*, supra at 778-79.

Relying on the foregoing authority, Judge Wisdom formulates the Fifth Circuit's test for seaman status as follows:

> There is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.
> *Robison*, supra at 779, footnotes omitted.

Applying this test, Robison was found to be a seaman, since his duties aboard Offshore No. 55 "contributed to her mission, to the operating function she was designed to perform as a sea-going drilling platform". Id.

Finally, Judge Wisdom concluded that this determination was in keeping with the spirit and purpose of

the Jones Act. See discussion at 266 F.2d 780 and in Part V, infra.

The development of the test for seaman status in other jurisdictions has generally been in line with that of the Fifth Circuit.

The Eighth Circuit follows the same rule as the Fifth Circuit. *Miller v. Patton-Tully Transp. Co., Inc.*, 851 F.2d 202, 204 (8th Cir. 1988), appeal after remand, 878 F.2d 1103 (8th Cir. 1989). See also *Slatton v. Martin K. Eby Const. Co.*, 506 F.2d 505 (8th Cir. 1974).

The Eleventh Circuit (once part of the Fifth), also follows the *Robison* rule. See *Caruso v. Sterling Yacht and Shipbuilders, Inc.*, 828 F.2d 14, 15 (11th Cir. 1987), citing *Robison*, and the recent case of *Archer v. Trans/American Services. Ltd.*, 834 F.2d 1570 (11th Cir. 1988), according seaman status to an assistant pantryman aboard a cruise ship injured in a car accident while on shore leave.

The Ninth Circuit, according to *Ramos v. Universal Dredging Corp.*, 547 F.Supp. 661 (D.Hawaii 1982), follows the Fifth Circuit's interpretation of the "aid to navigation" requirement:

> The Plaintiff argues that (the aid to navigation requirement) is liberally construed by the courts, and that this test is met if the worker is found to have "contributed to the function of the vessel." The Defendant proposes a more narrow reading of this prong of the test.
>
> It is clear that the term "seaman" is not limited only to those who "hand, reef and steer". In *Robison*, supra, the Fifth Circuit, noted that even a cook or an engineer can be considered "in aiding navigation". The court further noted other cases that have extended the "in aid of navigation" test to oil field workers aboard a submersible drilling barge, a handyman on a dredge anchored to shore, a pile driver assigned to a radar station tower being constructed at

> sea, an employee doing odd jobs around his employer's wharf, a fireman on a floating derrick, laborers aboard barges collecting gravel pumped up from a river bottom and deckhands aboard a dredge.
>
> Most courts, including the Ninth Circuit, appear to have accepted *Robison*'s liberal interpretation of the "in aid of navigation" requirement. See, *Buna v. Pacific Far East Line, Inc.*, 441 F.Supp. 1360 (N.D.Cal. 1977); *Bullis v. Twentieth-Fox Film Corp.*, 474 F.2d 392, n.10 (9th Cir. 1973); *Baker v. Pacific Far East Lines, Inc.*, 451 F.Supp. 84 (N.D.Cal. 1978); *Lawrence v. Norfolk Dredging Co.*, 319 F.2d 805 (4th Cir. 1963). *Contra, Griffith v. Wheeling Pittsburgh Steel Corp.*, 521 F.2d 31 (3d Cir. 1975), cert.den., 423 U.S. 1054, 96 S.C. 785, 46 L.Ed.2d 643 (1976).

See also *Estate of Wenzel v. Seaward Marine Servs., Inc.*, 709 F.2d 1326, 1328 (9th Cir. 1983).

The Fourth Circuit set forth their test for status in *Whittington v. Sewer Const. Co., Inc.*, 541 F.2d 427, 436 (4th Cir. 1976):

> To qualify as a "member of the crew" under the Jones Act one must be more or less permanently attached to a vessel or fleet; he must be one whose duties serve "naturally and primarily as an aid to navigation" *in the broadest sense*, and the vessel must be in navigation. (emphasis added)
>
> See also *Hill v. Diamond*, 311 F.2d 379 (4th Cir. 1962), citing *Robison*.

In *Searcy v. E. T. Sliker, Inc.*, 679 F.2d 614 (6th Cir. 1982), the court reversed summary judgment denying seaman's status to the plaintiff, who was a security guard at the defendant's sand and gravel business on the Ohio River. The plaintiff was required to board the vessels docked at the plant every two hours to check their gas pumps. He sometimes had to set lanterns. The *Searcy* court cites the *Robison* test and notes that it is virtually

the same as that cited above. *Searcy v. E.T. Sliker, Inc.*, supra at 616. Summary judgment was granted by the court below on the basis of the plaintiff's failure to satisfy the "aid in navigation" prong of the test. Reversal was mandated in view of the "broad construction to be given the "aid in navigation" requirement. Ibid. Prior to *Searcy*, in *Luckett v. Continental Engineering Co.*, 649 F.2d 441 (6th Cir. 1981), the same test for status was recited and relied upon by the court. Luckett was an assistant crew chief of a survey team. During the winter months, the crew was required to travel to work sites in a sixteen foot boat. The crew used the boat about 60% of their workday during these months, for the purpose of transporting crew and equipment. The plaintiff was accidentally shot while on land when a gun in the boat discharged. Citing the Supreme Court cases of *Senko* and *Grimes*, the court held that there was a jury question as to seaman status. We would also direct the court to the recent case of *Petersen v. Chesapeake & Ohio Ry. Co.*, 784 F.2d 732, 738 (6th Cir. 1986), which held, "One who works aboard a ship 'in navigation' satisfies the 'in aid of navigation' requirement if his duties contribute to the operation of the vessel." The plaintiff in that case was a shore-based mechanic who performed maintenance and repairs on ferries while sailing between ports.

The Second Circuit has likewise adopted *Robison*, see *McSweeney v. M. J. Rudolph Corp.*, 575 F.Supp. 746 (E.D.N.Y. 1983). A case with a good discussion of the "aid in navigation" requirement, which accorded seaman status to a scowman, was *Demarac v. American Dredging Co.*, 486 F.Supp. 853 (S.D.N.Y. 1980):

> Defendant argues that plaintiff's duties in connection with the operation and maintenance of the scow are not connected with the actual navigation of the vessel and do not require the skills of a traditional seaman, and that plaintiff's connection with the vessel was not permanent

because he supplied his own food and worked only a three-day split.

A worker aboard a vessel need not perform the traditional duties of a ship's crew to be a Jones Act "seaman". "The remedies afforded by the Jones Act . . . are designed to protect those who perform services upon ships and are exposed to the unique hazards of work upon the sea . . . The courts have long given seaman status to those performing tasks not necessary to the actual navigation of the ship". *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165, 170 (2d Cir. 1973) (holding a ship's hairdresser was a "seaman"). Where plaintiff was the sole operator of the scow and the totality of functions required to be performed aboard the vessel were of necessity in his charge; where plaintiff lived on the vessel during this work periods and had been assigned to that particular vessel for a month and to similar scows for seven years, it is apparent that his presence aboard the vessel was neither transient nor fortuitous and his tasks were central, not peripheral to the vessel's operation and mission.

(citations omitted)

also *Weiss v. Central R.R.*, 235 F.2d 309, 312 (2nd Cir. 1956); *Harney v. Moore*, 359 F.2d 649 (2nd Cir. 1966)

The First Circuit also followed the *Robison* test in *Bennett v. Perini Corp.*, 510 F.2d 114, 115 (1st Cir. 1975). In that decision, the court held that there was a jury question as to status in the case of a carpenter who fell from a bridge pier under construction. See also *Stafford v. Perini Corp.*, 475 F.2d 507, 510 (1st Cir. 1973).

The Third Circuit is said to have rejected the *Robison* standard in favor of a requirement that the injured employee contribute to the transportation function of the vessel. See the dissents from denial of certiorari in *International Oilfield Divers, Inc. v. Pickle*, 479 U.S. 1059, 107

S.Ct. 939, 93 L.E.2d 989 (1987), citing *Simko v. C & C Marine Maintenance Co.*, 594 F.2d 960, 964-965 (3rd Cir. 1979), cert. den., 444 U.S. 833, 100 S.Ct. 64, 62 L.E.2d 42 (1979) and *Lormand v. Aries Marine Corporation*, 484 U.S. 1021, 484 U.S. 1031, 108 S.Ct. 739, 98 L.E.2d 774 (1988). In that case, the court held that a maritime worker *who did not actually go to sea*, but who is injured on a vessel, must show that he performed significant navigational functions to be a seaman. But later cases in the Third Circuit have confined that decision to its facts. For example, in *Etu v. Farleigh Dickinson University West Indies*, 635 F.Supp. 290 (D.Virgin Islands 1986), the plaintiff was a diver assigned to service and supply aquanauts in a hydrolab habitat anchored fifty feet beneath the water's surface who contracted decompression sickness. In that case, the court applied the test for seaman status used by the Fifth Circuit, *Etu v. Farleigh Dickinson University West Indies*, supra at 293), also citing *Wallace v. Oceaneering Intern.*, 727 F.2d 425 (5th Cir. 1984).

In *Lynn v. Heyl and Patterson, Inc.*, 483 F.Supp. 1247, 1251 (W.D. Pa. 1980), the court held that *Simko* stands only for the proposition that one who works at the water's edge on a temporary basis is not a seaman.

Davis v. Sedco Forex, 660 F.Supp. 85, 86-87 (E.D.Pa. 1987) accorded seaman status to a driller on a drilling rig off the coast of Angola:

> This Court in analyzing the "in navigation" requirement noted that it merely required the vessel to be engaged as an instrument of commerce or transportation on navigable waters. Also, offshore drilling rigs have been considered vessels.
>
> The Third Circuit has had occasion to examine the "in navigation" requirement. Four years after *Griffith*, 521 F.2d 31 (3rd Cir. 1975) the Court of Appeals stated "the clear import of our opinion in *Griffith* is that a maritime worker

> who does not actually go to sea but who is injured while performing duties on a navigable vessel must establish that he performed significant navigational functions with respect to that vessel in order to recover under the Jones Act". *Simko v. C & C Marine Maintenance Co.*, 594 F.2d 960, 964-5 (3d Cir. 1979) (emphasis added); See also *McNeill*, 1986 A.M.C. at 2251 n. 13 ("where plaintiff is a traditional blue-water seaman, proof of actual navigational functions is not required . . . ") When a maritime worker is on the high seas and is subject to the risks which face traditional seamen, the "in navigation" requirement should be applied liberally. See *Mietla v. Warner Co.*, 387 F.Supp. 937, 939 (E.D. Pa. 1975).
>
> (citations omitted)

And in *Gallop v. Pittsburgh Sand and Gravel, Inc.*, 696 F.Supp. 1061, 1061-63 (W.D.Pa. 1988), seaman status was given to a crane operator on a dredging barge injured off the vessel. The case distinguishes *Simko* on the ground that, in *Simko*, "plaintiff was primarily a shore-based employee whose presence aboard the vessel was incidental and related to his shore-based activities".

Therefore, under the test now in use in the Third Circuit, Jon Wilander, whose employment required him to actually go to sea and face all the perils attendant thereto, would clearly be entitled to seaman status.

Into this long established body of jurisprudence, dating back over a century, we must now interject the anamolous Seventh Circuit decision of *Johnson v. John F. Beasley Construction Company*, 742 F.2d 1054 (7th Cir. 1984). Plaintiff Johnson was the foreman of a crew of ironworkers engaged in bridge construction on a barge in the Illinois River. The barge was used as a work site and for the transportation of construction materials. On the day of Johnson's injury, the tugboat used to propel the barge collided with a beam protruding over the edge of the barge. The beam struck Johnson's leg, causing injury which resulted in amputation.

The opinion begins with the court's frank admission that "(C)laims brought under the Jones Act have not been litigated frequently in this circuit". 742 F.2d at 1056.[8] The Court discusses the *Bassett, Norton,* and *Desper* decision, as well as *Wilkes v. Mississippi River Sand & Gravel Co.*, 202 F.2d 383, 388 (6th Cir. 1953), which set out the now familiar three-prong test for status under the Jones Act: "(1) that the vessel be in navigation; (2) that there be a more or less permanent connection with the vessel; and (3) that the worker be aboard primarily to aid in navigation". Surprisingly, the court notes that prior jurisprudence mandates a liberal construction of the "aid in navigation" requirement:

> (I)n construing the third requirement, the *Wilkes* court itself noted that it should not be confined to those who "hand, reef and steer", but is applicable "to all those whose duties contribute to the operation and welfare of the vessel". Ibid, relying on the Supreme Court's statements in *Norton,* supra at 1058-59.

The court continued by reviewing *Gianfala, Senko, Grimes* and *Butler* but was able to discern "few clues as to what the critical factors are in determining crew status". 742 F.2d 1059. *Offshore Co. v. Robison* is given brief mention, although the court notes that *Robison* "synthesized then-existing case law" Id. at 1060, note 3) and admits that "(t)he *Robison* test has been accepted by many courts not only as a test of whether a case should go to the jury in a Jones Act dispute, but also as a test to be used 'in delimiting the power of the factfinder to deny or confer

---

[8] This, of course, is not surprising, since the states which comprise the Seventh Circuit (Illinois, Wisconsin and Indiana) are not likely to be home to much sea-faring activity. The Fifth Circuit, on the other hand, is home to the vast majority of offshore oil and gas production.

[seaman's] status' ". Id., footnotes omitted, citations omitted.

The *Johnson* court then concludes that the third prong of the *Robison* test should not be followed because "it accords insufficient weight to the relationship between the employee and the *transportation function* of the vessel". Id. at 1061, emphasis supplied by the court. No authority is given for this conclusion. The court then criticizes Judge Wisdom for attaching too much importance to *Gianfala, Grimes,* and *Butler* and concludes that these cases are "anomalous in giving insufficient attention to the employee's duties as they relate to the transportation function of the vessel". Ibid.

The court contends that *Bassett* and *Norton* "(emphasized that) activities contributing to the operation and welfare of the vessel as a means of transport on water are critical to jurisdiction under the Jones Act". Ibid. But in fact, the court in *Senko* stated that *Bassett* had been misunderstood and should be read as standing for the principle that a fact-finder's decision on status is final if it has a reasonable basis. Further, *Senko* de-emphasized the importance of the aid in navigation requirement. See discussion supra, at pp. 19-21. Further, how can *Norton* be said to emphasize the transportation function of the vessel – *when the vessel in that case never went to sea*. See discussion supra at p. 14.

The Court goes on to conclude:

> . . . we believe it is the employee's relation to the transportation function of the vessel, i.e., whether the employee contributes to the maintenance, operation, or navigation of the vessel as a means of transport on water, that is critical for Jones Act purposes. Such an interpretation fulfills what we believe to be the central purpose of the Act; to provide protection for those subjected to risks associated with the transportation

function of vessels on navigable waters. p. 1061-62, Id. at 1061-62.

Supposedly, "(T)his view is consistent with the approach the Third Circuit has taken . . . " Id. at 1062 Yet, as stated earlier, the later decisions in the Third Circuit, and *Simko* itself, indicates that the concern is that seaman status be accorded workers who face *the perils of the sea* – not just those involved in transportation functions. See cases cited supra at pp. 32-33.

Finally, the court concludes that the barge in this case was a vessel in navigation but had no crew aboard. Instead, the court concludes that the "crew" of the barge were the "operators of the work boats and tugs and the deckhands assigned to them that pushed (the barge)". Id. at 1064. Again, no authority is cited for this unique conclusion.

The Fifth Circuit had the opportunity to reject thirty years of case law and adopt the *Johnson* rationale when they reconsidered the continued viability of *Robison* in *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986). But the court chose not to do so.

Plaintiff, Barrett, was a welder's helper whose crew performed maintenance and repair services for stationary offshore platforms in the Gulf of Mexico. The structures involved were stationary, not movable, drilling structures located on the outer Continental Shelf. The latter have been recognized as "vessels" by this court in *Gianfala* and *Herb's Welding v. Gray*. Therefore, the plaintiff was required to show that he had a substantial connection to a vessel. Some of the platforms were too small for the work to be performed without a standby barge, which was utilized 30% of the time. Barrett and his crew ate and slept on a nearby fixed platform. He was injured while being transported via personnel basket from a crew boat to the standby barge.

The Court began its analysis discussing the pertinent Supreme Court decisions, including *Haverty, Barrett, Norton, Gianfala, Senko, Grimes* and *Butler*. These cases were the background for and basis of *Robison*, and explained Judge Wisdom's omission of the "aid to navigation" language from the *Robison* test. As Judge Wisdom held (at 266 F.2d 780, cited in *Barrett* at 781 F.2d 1072):

> Our review of the cases shows this test has been watered down until the words have lost their natural meaning . . . we attach less importance to either of these catchphrases than we do to the cases piled on cases in which recovery is allowed when by no stretch of the imagination can it be said that the claimant had anything to do with navigation and is a member of the ship's company only in the sense that his duties have a connection with the mission or the function of the floatable structure where he was injured.

The court also reiterated the second important holding of *Robison* – emphasizing the all important role of the fact-finder in determining status questions. (at 781 F.2d 1072-73).

The Court gave short shrift to the arguments that *Robison* erred in eliminating the "aid in navigation" requirement or that the second prong of the test should be modified to grant status only to those workers which contribute to the "transportation function" of the vessel.

> We cannot accept either of these suggestions, because as Judge Wisdom cogently and convincingly explained in *Robison*, the later Supreme Court cases require such a broad definition of "aid to navigation" that the test proposed by amici is entirely inconsistent with them.
>
> 781 F.2d at 1073.

The remainder of the original opinion discusses the degree of attachment to the vessel required to attain seaman status, an issue not before the Court today.

It is important to note that the rehearing in *Barrett* was not granted to consider whether the "mission seaman" concept of the *Robison* case should be abandoned in favor of *Johnson's* "transportation function" approach. The court apparently wished to re-examine the degree of vessel-connexity required by *Robison*. Professor Robertson, in his article on seaman status, reproduces the directive of the Clerk to counsel as follows:

> On April 9, 1985, the Fifth Circuit Clerk wrote to *Barrett* counsel, noting the Court's grant of rehearing en banc on that date, inviting amicus briefs from the Louisiana Association of Defense Counsel and the Louisiana Trial Lawyers Association, and directing the parties to brief the following questions:
>
> What, if anything, should be done to reduce the uncertainties that have evolved from the application of some portions of the *Offshore [Co.] v. Robison* test? Consider the following areas in addition to any others that you may wish to include:
>
> (1) How can "permanent", in the "more or less permanent" attachment to a vessel or fleet of vessels prong of the test, be given more substance?
>
> (2) Should we reconsider the definition of "fleet of vessels" in the same prong of the test?
>
> (3) Can the definition of "substantial portion of his work on the vessel" prong of the test be given more substance and content?
>
> Letter from G. Ganucheau, Clerk of the Fifth Circuit, to All Counsel of Record, *Barrett v. Chevron* (April 9, 1985) (copy on file with author). Robertson, supra at 116, n. 224.

The finder of fact determined that Barrett usually spent twenty to thirty per cent of his time working aboard vessels through his year of employment in the Bay Marchand field. However, in the eight day period immediately preceding his injury, Barrett worked aboard a vessel eighty per cent of his work day. Holding that his status must be determined in the context of his entire term of employment, status was denied, since the twenty to thirty per cent of his work time spent aboard vessels could not be considered "substantial".

Judge Alvin B. Rubin dissented, joined by five other members of the panel, but only from that portion of the opinion addressing the degree of attachment. The dissenters would have made *no* modification of the *Robison* rule. No where in the dissent is any dissatisfaction expressed with the "mission seaman" portion of the *Robison* test. Rather, Judge Rubin and the other dissenters felt that, especially in the case of offshore oil workers assigned to hitches of limited but definite duration, more emphasis should be placed on the duties of the worker during the hitch on which he was injured.

The four concurring judges did express their preference for the *Johnson* rule. The brief opinion was written by Judge Gee, and among those adopting it was Judge Jones. It is important to note that Judge Jones and Judge Gee were on the panel which decided the instant case in the Fifth Circuit. (*Wilander v. McDermott Intern., Inc.*, 887 F.2d 88 (5th Cir. 1989)). Judge Gee, writing for the court, rejected defendant's suggestion that the *Johnson* rule be adopted.

> The Supreme Court has not . . . held that our Circuit's test is incorrect and that of the Seventh Circuit correct. Absent such a holding by the Supreme Court, we must adhere to our en banc decision in *Barrett*, which reaffirmed the validity of the *Robison* test. Under that test, there was

sufficient evidence to support the jury's finding that the plaintiff had status as a seaman.

Id. at 90-91.

V. POLICY GUIDELINES AND CONGRESSIONAL INTENT GOVERNING SEAMAN STATUS DETERMINATIONS

The task of formulating a workable test for determination of seaman status must seek to implement the policy behind the Jones Act. The foundation of Jones Act coverage is exposure to the perils of the sea. See *Mungia v. Chevron Co., U.S.A.*, 675 F.2d 630, 633 (5th Cir. 1982), quoting *Robison*, supra at 771. This is due to the fact that exposure to the "perils of the sea" is a distinguishing characteristic of the work of a seaman. Robertson, supra at 80, citing *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104 (1946)(Stone, C.J., dissenting).[9]

This Court has recognized the dangers inherent in the locale of a seaman's workplace, including isolation and distance from shore, in *Herb's Welding, Inc. v. Gray*, 105 S.Ct. 1421, 1435 n. 10, 1438, 1440 n.20 (1985)(Marshall,

---

[9] Professor Robertson also cites the following cases which refer to the importance of the plaintiff's exposure to the perils of the sea in determining seaman status. (at p. 99, n. 116)

Wallace v. Oceaneering Int'l, 727 F.2d 427, 436 (5th Cir. 1984); *Bertrand v. International Mooring & Marine, Inc.*, 700 F.2d 240, 243, 245 (5th Cir. 1983), cert. denied, 464 U.S. 1069 (1984); *Davis v. Hill Eng'g, Inc.*, 549 F.2d 314, 327 (5th Cir. 1977); *Litherland v. Petrolane Offshore Constr. Servs., Inc.*, 546 F.2d 129, 130 (5th Cir. 1977); *Kimble v. Noble Drilling Corp.*, 416 F.2d 847, 849 (5th Cir. 1969), cert. denied, 397 U.S. 918 (1970); *Atkins v. Greenville Shipbldg. Corp.*, 411 F.2d 279, 283 (5th Cir.), cert. denied, 396 U.S. 846 (1969); *Berry v. American Commercial Barge Lines*, 114 Ill. App. 3d 354, 450 N.E.2d 436 (1983), cert. denied, 465 U.S. 1029 (1984).

J., dissenting). See also *Pure Oil Co. v. Snipes*, 293 F.2d 60, 66-67 (5th Cir. 1961) and Int'l Labor Office, "Safety Problems in the Offshore Petroleum Industry" 19-27 (1978).

In the *Robison* case, Judge Wisdom was guided by the primary objective of implementing this policy, and recognized that nowhere are the perils of the sea more evident that in the milieu of offshore oil drilling.

> There is no reason for lamentations. Expansion of the terms "seaman" and "vessel" are consistent with the liberal construction of the Act that has characterized it from the beginning and is consistent with its purposes. Within broad limits of what is reasonable, Congress has seen fit to allow juries to decide who are seamen under the Jones Act. There is nothing in the act to indicate that Congress intended the law to apply only to conventional members of a ship's company. The absence of any legislative restriction has enabled the law to develop naturally along with the development of unconventional vessels, such as the strange-looking specialized watercraft designed for oil operations offshore and in the shallow coastal waters of the Gulf of Mexico. Many of the Jones Act seamen on these vessels share the same marine risks to which all aboard are subject. And in many instances Jones Act seamen are exposed to more hazards than are blue-water sailors. They run the risk of top-heavy drilling barges collapsing. They run all the risks incident to oil drilling.
>
> *Robison*, supra at 780.

The dangers faced by the seaman are both psychological and physical. Robertson, supra at 81, citing L. Hunt, *Safety of Life Offshore: Motivation and Psychological Stress in Offshore Operations* 32 (1983). It is because of their exposure to these special physical and psychological hazards that the maritime law gives special solicitude to the wards of the courts of admiralty. Robertson, supra at 81.

As a limitation on the implementation of this policy, this Court has imposed the requirement that a seaman be a member of the crew of a vessel. *Swanson v. Marra Brothers*, supra. As a result, some workers who do indeed face the perils of the sea will be denied seaman's status. It is logical to exclude longshoremen and other inshore workers, who perform their services only while the vessel is securely moored, since these employees do not face the same dangers as do seamen. The *Robison* requirement that an employee perform a substantial amount of his work aboard a vessel or an identifiable fleet serves this purpose by precluding these amphibious inshore workers from attaining Jones Act coverage. Also excluded are those involved in drilling operations of fixed, or stationary oil drilling platforms. But, as Professor Robertson has noted (supra at 100-101):

> Offshore platform workers unquestionably confront many of the perils of the sea; nevertheless, they are excluded from seaman status as a matter of Supreme Court construction of congressional language,[124] and not because it would strain the policy of the seaman's protections to cover them.

---

[124] *Swanson*, 328 U.S. at 6, reads the 1927 LHWCA as effectively amending the Jones Act; *Rodrigue*, 395 U.S. at 352, was principally a construction of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331-1356 (1982); *Herb's Welding, Inc.*, 105 S.Ct. at 1421, construed the 1972 amendments to LHWCA, 33 U.S.C. 902(3), 903(a) (1982).

However, the Supreme Court has recognized, in both the *Gianfala* and *Herb's Welding* cases, that floating offshore rigs are indeed vessels. See the opinion of the majority at 105 S.Ct. 1424, n. 2 and of the dissent at p. 1430 n. 1.

The consistency of such a distinction has eluded many commentators, and is well summarized as follows,

in Fallon, "The Test of Seaman Status" 55 Tulane L. Rev. 1010, 1023 (1981) (footnotes omitted).

> The *Robison* court observed that many offshore workers share the same marine risks as traditional sailors. They run the risk of exposure to the sea and all of its idiosyncrasies; they also run the risks incident to oil drilling. If the tacit underlying justification for extending the Jones Act to cover the offshore worker permanently assigned or performing a substantial part of his work aboard a movable rig is the danger inherent in the offshore industry, one might argue that those employed aboard a fixed platform should also be covered since the dangers to which they are exposed are no less ominous. Moreover, if the application of the Jones Act to the movable rig employee is based upon his exposure to the risks of the maritime atmosphere one might reasonably suggest that such risks are no less for his brother laboring on a fixed platform. This equivalence is particularly true when the movable rig is in the drilling mode resting on the seabed. Whether such a distinction should exist is debatable, but the fact remains that a distinction is made between the remedies available to the movable rig employee and his counterpart on the fixed platform when these employees are injured or killed in the course of their employment.

The policy behind the Jones Act would best be served by abolition of distinctions between workers on fixed platforms and other offshore workplaces which are classified as vessels. However, such a change is unnecessary to accord seaman status to Mr. Wilander. This man was accorded seaman status by virtue of the fact that he spent at least 80% of his time working aboard a barge and vessels whose special mission it was to serve as "paint boats." Without Wilander and his crew of painters and sandblasters, the paint boats did not navigate at all, for then they had no mission. This man faced the perils of the

sea every single day he worked for McDermott International. The already hazardous nature of the operations being conducted in the Persian Gulf was compounded by the fact that the business at hand was being conducted over water, and communications between supervisors and employees separated by miles of open sea were hopelessly botched. This, in fact, was the cause of Wilander's injury.

Any discussion of the relative merits of the *Johnson* and *Robison* formulae must begin with the acknowledgement that the two decisions hardly stand on equal footing. As the Fifth Circuit noted in *Barrett*, the *Robison* standard is one which has withstood the test of time and the changing needs of maritime commerce. As of the writing of *Barrett*, it had been cited 95 times and, as discussed supra, had served as the means by which most other circuits determine status questions arising in their own jurisdictions. (*Barrett*, 781 F.2d at 1073) The *Johnson* court, on the other hand, acknowledged their unfamiliarity with admiralty cases (742 F.2d at 1056) and then, instead of choosing to benefit from the wisdom of experience, opted to create its own unique interpretation of the proper test to be applied.

More importantly, *Robison*, unlike *Johnson*, is consistent with precedent established by this Court. The holding of the *Johnson* decision cannot be reconciled with the holdings of this Court in *Gianfala, Grimes, Norton, Senko* and *Butler*. What the court in *Johnson* failed to realize is that the "navigational function" criterion has "a long but conspicuously undistinguished history in the seaman status jurisprudence" and is "too exclusive, eliminating from seaman status such paradigmatic sailors as cooks on river tugs." Robertson, supra at 113. Professor Robertson goes on to explain the problems with the *Johnson* rule as follows:

> The *Johnson* opinion badly misses the boat in a number of respects. First, the language of its

> holding makes no distinction between offshore workers, who clearly confront the perils of the sea, and amphibious inshore workers, who typically do not. To require offshore vessel workers like the *Robison* plaintiff to show that their work contributes to the drilling rig's "transportation function" would remove most of them from the seamen's protections, and they may well be the class of persons *who need those protections most*. A second and related criticism is that the *Robison* decision was not a stretching of the Jones Act for the indicated "equitable economic reasons," but meant what it said: Offshore oil rig workers are entitled to the seamen's protections because they work on vessels and "share the same marine risks to which all aboard are subject. And in many instances Jones Act seamen are exposed to more hazards than are blue-water sailors. They run the risk of top-heavy drilling barges collapsing. They run all the risks incident to oil drilling." Third, the "transportation function" focus is synonymous, or very nearly so, with the "navigational duties" criterion that has produced so much grief in the status jurisprudence; it will quickly prove either too restrictive or relatively meaningless. Fourth, the "transportation function" test is fully inconsistent with the Supreme Court's decisions in *Gianfalu* and *Grimes*, and is exceedingly difficult to reconcile with the opinions and outcomes in *Norton, Senko*, and *Butler*. Finally, *Johnson* reached the wrong result. Plaintiff sometimes worked on the construction barge when it was in motion, and he was hurt when the employer's tug ran into it. Even marginal sensitivity to the need to protect workers whose duties expose them to the risks attending the movement of vessels would have sent the *Johnson* case to the jury.
>
> Robertson, supra at 1144-1145.
>
> (emphasis added)

Another distinguished commentator notes:

The nub of difference between these two approaches is in the seaman status test applied to special purpose floating offshore structures that are designed not for transportation but for other purposes, such as drilling for oil and gas. The *Robison* formulation specifically includes such structures as "vessels" thereby qualifying workers attached to them as seamen. The "transportation function" interpretation of the Seventh Circuit, however, would disqualify these workers as seamen, remitting them to workers' compensation remedies under federal and state law. It is obviously easy for the Seventh (and Third) Circuits to adopt a test that excludes offshore workers since such structures do not exist within their jurisdictions and are not likely to in the future. For the Fifth Circuit to adopt the transportation function idea would mean, however, a repudiation of a consistent line of cases dating back at least to 1959.

Thomas J. Shoenbaum, *Admiralty and Maritime Law*, (1987) Section 5-5, p. 179-80 (footnotes omitted).

Moreover, the term "vessel" as defined in 1 U.S.C. 3 "includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Therefore, it is patently illogical to require, as does the Seventh Circuit, that a worker perform transportation tasks to attain seaman status, since the vessel to which he is assigned need not be engaged in transportation to be considered a vessel.

Cited below is an excerpt from the Congressional Records for December 10, 1982.[10] Before Congress was an

---

[10] A Bill to modify the Maritime Laws Applicable to the Recovery of Damages by Certain Foreign Seamen: Hearings on H.R. 4863 Before the Subcomm. on Merchant Marine of the House Comm. on Merchant Marine and Fisheries, 97th Cong., 2d Sess. 21 (1982) (Statement of Representative John Breaux).

amendment to the Jones Act designed to exclude certain foreign seamen from Jones Act Coverage. In explaining the impact of the bill to his colleagues, Representative (now Senator) John Breaux of Louisiana assured them:

> It does maintain the full range of U. S. Jones Act protections U. S. courts currently afford U. S. citizens employed on both traditional merchant marine vessels and special purpose vessels engaged in exploration, development, or production of offshore mineral and energy resources, no matter where they are located.

Representative Breaux went on to state that the bill also intended Jones Act coverage for foreign seamen employed on special purpose vessels on the U. S. Outer Continental Shelf.

Therefore, it is clear that the most current expression of the will of Congress on this issue provides for a clear intent to accord seaman status to American citizens, such as Jon Wilander, who are injured aboard vessels which have a special purpose, such as the *M/V GATES TIDE*, even if those vessels and the duties of those aboard them are not that of the traditional merchant marine.

Uniformity and adherence to the policy behind Congressional enactments is indeed essential to the maritime law. But the break from uniformity, the break from policy, and the break from tradition was made by the *Johnson* court, not the Fifth Circuit. In order for uniformity to be achieved, the rule to be adopted must be designed to meet the needs of all jurisdictions. The Fifth Circuit, where special purpose vessels engaged in the business of offshore oil and gas production abound, is in need of a rule broad enough to accommodate the unique factual scenarios created by this environment. Although use of the Seventh Circuit rule *within that jurisdiction* might not severely frustrate of the need to protect those workers who face the perils of the sea and those who were meant by Congress to be covered by the Jones Act, a different result would obtain elsewhere in this country.

The writer is reminded of the ancient maxim "Ratio est legis anima; mutata legis ratione mutatur et lex."[11]

CONCLUSION

We have indeed progressed since the days when these words were written, and the offshore special purpose vessel will be known to future generations as the peculiar agent of maritime commerce of our time.

McDermott International expresses its lack of faith in the ability of a jury to understand such abstract concepts as "substantial amount of work." We would submit that this is certainly no more difficult for a juror to understand that the concept of "guilt beyond a reasonable doubt." All of the Supreme Court cases have, without exception, emphasized the importance of the role of the finder of fact in determining status questions.

> The Supreme Court's decisions suggest a consistent philosophy – that if courts will sometimes

[11] Reason is the soul of law; the reason of law being changed the law is also changed. Black, Henry C. *Black's Law Dictionary*. 4th ed. at 1429, citing *7 Coke 7*. Or, as another writer put it:

> It is universally conceded that the general principles of law must be applied to new kinds of property, as they spring into existence in the progress of society according to their nature and incidents, and the common sense of the community. In the early period of maritime commerce, when the oar was the great agent of propulsion, vessels were entirely unlike those of modern times – and each nation and period has had its peculiar agents of commerce and navigation adapted to its own wants and its own waters, and the names and descriptions of ships and vessels are without number.

Erastus C. Benedict, *The American Admiralty, Its Jurisdiction and Practice*. (1850) Sec. 241, pp. 133-34.

> err, they should err in the direction of over-inclusiveness. The Court's insistence on submitting all debatable status issues to juries is another way of saying that close calls should go to the worker. It is humanitarian bias.

Robertson, supra at 92.

In asking this Court to adopt the *Johnson* test, petitioners are seeking to have the Court repudiate the broad characterization of work which should be considered that of a seaman as set forth in *Norton, Senko, Gianfala, Grimes* and *Butler*. Petitioners are also suggesting that no one aboard a special purpose vessel dedicated to purposes other than transportation be considered a seaman, despite the recognition to the contrary in *Herb's Welding*. Petitioners request the court to deprive thousands of workers in the offshore oil industry of seaman status, when *these are the workers who need it the most*. Petitioners urge the Court to contravene the policy of protection to be accorded workers who face the perils of the sea by relegating them to less desirable remedies, or, as in Mr. Wilander's case, no remedy at all.

Petitioners seek to characterize offshore oil drilling as a "land-based" activity. What petitioners fail to realize is that this industry becomes maritime when it is performed on or from a vessel. In truth, almost any job performed on the sea has a land-based equivalent, or at least a parallel occupation which can be performed from the safety of a riverbank. To follow the reasoning of the Seventh Circuit, an employee would appear to be required to be chained to the helm twenty-four hours a day.[12]

[12] Since no one aboard a vessel "hands" or "reefs" any longer, it is presumed that the Seventh Circuit recognizes only those who "steer" as seaman.

What the *Johnson* court and petitioner have overlooked is that fact that a vessel cannot navigate at all unless everyone essential to her economic purpose is aboard. The paint boat in this case would have never left the "mother barge" without the paint crew aboard – they were essential to her economic mission. Likewise, fishing boats cannot sail without those who fish, whalers without those who harpoon. We would refer the court to the dissenting opinion in *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165, 173:

> I start with the proposition – conceded by the majority – that a beautician on a cruise ship is a seaman, just as are cooks, mess men, muleteers, bartenders, musicians, telephone operators, laundresses, and even barbers, when they are performing services that render the ship's voyage economically viable. A cruise ship which tried to attract female passengers without providing hairdressing services would soon be converted to duty as a cargo vessel.

And a "paint boat" which sailed without a paint crew would soon become a liability, rather than an asset, to its owner.

We ask the court to accommodate the changing needs of the maritime world, uphold the policy behind the Jones Act, and affirm.

Respectfully submitted,

J. B. Jones, Jr.
Jennifer Jones Bercier
Jones, Jones & Alexander
P. O. Drawer M
Cameron, LA 70631
Telephone: (318) 775-5714
Counsel for Respondent

No. 89-1474

In The

Supreme Court of the United States

October Term, 1990

MCDERMOTT INTERNATIONAL, INC.

Petitioner,

vs.

JON C. WILANDER

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF OF PETITIONER McDERMOTT INTERNATIONAL, INC.

JAMES B. DOYLE
VOORHIES & LABBE'
P. O. Box 3527
Lafayette, LA 70502
Telephone: (318) 232-9700

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

I.

When a worker is injured on a fixed platform in the Persian Gulf, but claims status as a seaman under the Jones Act, 46 U.S.C. 688, by alleging connection to an American-flagged vessel, how is the United States District Court to determine which of the conflicting definitions of status constitutes American law, specifically, whether transportation-related employment functions are a pre-requisite to status under the Act?

LIST OF PARTIES

The following are the parties to this proceeding:

Jon C. Wilander
Plaintiff-Respondent

McDermott International, Inc.[1]
Defendant-Petitioner

---

[1] *Subsidiaries, Affiliates and Partnerships of McDermott International, Inc.* (Excluding Wholly-Owned Subsidiaries)

Davy McDermott Ltd.
Initec, Astano Y McDermott International Inc., S.A.
Malmac Sdn. Bhd.
McDermott Arabia Company Limited
McDermott-ETPM, Inc.
P. T. McDermott Indonesia
McDermott Incorporated
B&W Mexicana, S.A. de C.V.
Babcock & Wilcox Beijing Company, Ltd.
Diamond Power Hubei Company Ltd.
Babcock & Wilcox Gama Kazan Teknolojisi Anonim Sirketi
Thermax Babcock & Wilcox Private Ltd.
Hudson Northern Industries, Inc.
Rotovent S.A. de C.V.
Diamond Power (Australia) Pty. Limited
Halley & Mellowes Pty. Ltd.
Heerema-McDermott (Aust.) Pty. Ltd.
HeereMac
Panama Offshore Chartering Company, Inc.
McDermott (Nigeria) Limited
McDermott Scotland Limited
MMC – McDermott Engineering Sdn. Berhad
P. T. Babcock & Wilcox Indonesia
P. T. Bataves Fabricators

(Continued on following page)

LIST OF PARTIES – Continued

Louisiana Trial Lawyers Association (LTLA)
Amicus Curiae Respondent

Association of Trial Lawyers of American (ATLA)
Amicus Curiae Respondent

J.B. Jones, Jr., Jennifer Jones Bercier,
and Michael Bercier of the law firm of
Jones, Jones & Alexander, P. O. Drawer M,
Cameron, Louisiana 70631
Attorneys for Plaintiff-Respondent

James B. Doyle of the law firm of
Voorhies & Labbe', P. O. Box 3527,
Lafayette, Louisiana 70502
Attorney for Defendant-Petitioner

(Continued from previous page)

Topside Contractors of Newfoundland, Ltd.
Arabian Petroleum Marine Construction Company
DB/McDermott Company
Abahsain Hudson Heat Transfer Co. Ltd.
Construcciones Maritimas Mexicanas, S.A. de C.V.
ASEA Babcock PFBC
B&W Fuel Company
B&W Nuclear Service Company
Babcock Ultrapower Jonesboro
Babcock-Ultrapower West Enfield
Diamond Power Specialty Limited
Especialidades Termomecanicas S.A. de C.V.
Babcock & Wilcox Services, Inc.
KBW Gasification Systems, Inc.
North American CWF Partnership
Palm Beach Energy Associates
Maine Power Services
PowerSafety International, Inc.
South Point CWF

LIST OF PARTIES – Continued

Mr. Richard J. Arsenault of the law firm of
Neblett, Beard & Arsenault, P. O. Box 1190
Alexandria, LA 71309-1190
Attorney for *Amicus Curiae* Respondent LTLA

Mr. David Robertson, Attorney at Law,
727 East 26th Street
Austin, TX 78705
Attorney for *Amicus Curiae* Respondent ATLA

Mr. Russ M. Herman, Attorney at Law,
1050 31st St., N.W.
Washington, DC 20007
President, Association of Trial Lawyers of America

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Scope Of Petitioner's Reply To The Briefs Of Respondent Wilander And Amici LTLA And ATLA

Because the decisions of many courts below, and this Court, regarding Jones Act coverage turn on essentially factual inquiries, many cases can be found and cited to support, in turn, stringent and lax interpretations of the components which make up an inclusive test.

The citations by Respondent and his *Amici*, in some measure, obfuscate the issues presented by Petitioner in its application and brief in support. Those briefs also broaden the factual inquiry which, on the face of the opinions of the courts below, is a fairly narrow one.

For these reasons, Petitioner sees the need for reply to the Respondent and *Amici* on the issues presented.

ARGUMENT

Contrary To The Assertions Made By Respondent And Amici, *Offshore Co. v. Robinson*[1] Has Never Been Adopted By This Court As A Uniform National Rule Regarding Coverage Under The Jones Act[2]

Judge Wisdom's "riddle"[3], as all intellectual puzzles, must be approached from an analytical starting point. His is but one of many used by courts divining the intent of Congress in its passage of the Jones Act. It has never been adopted by this Court as *the* test, and its cumbersome

---

[1] 266 F.2d 769 (5th Cir. 1959).

[2] 46 U.S.C. 688(a).

[3] *Robison*, at p. 720.

application can be easily demonstrated by a review of any of the number of cases either relying on it, distinguishing it, or disapproving its use.

Because, as a starting point, *Robison* operated to expand remedies which were not otherwise available to a particular class of workers (roughnecks engaged in drilling responsibilities on floatable structures), its citation has often been used to create an expansive view of the test for status[4]. As early as 1985, one commentator recognized this exercise was leading inevitably towards the end of the decision's useful life:

> What has happened to *Robison* is what eventually happens to virtually all judge-made doctrine. The first stage is the articulation of the doctrine, often accompanied by an acknowledgment of its shortcomings, and an explanation of its policy basis. Judge Wisdom's *Robison* opinion . . . explained the underlying policy and cautioned that the doctrine could not be expected to serve as a self-executing test for seaman status.
>
> The second stage is the crystallization of the doctrine. The seaman status opinions routinely caution that the *Robison* criteria do not fully define seaman status, but merely provide "an analytical starting point." . . .

[4] *See, e.g., Noble Drilling Corporation v. Saunier*, 335 F.2d 62 (5th Cir. 1964), *cert. den.* 380 U.S. 943, 85 S.Ct. 1025, 13 L.Ed.2d 962 (1965); *Atkins v. Greenville Shipbuilding Corporation*, 411 F.2d 279 (5th Cir. 1969), *cert. den.* 396 U.S. 846, 90 S.Ct. 105, 24 L.Ed.2d 96 (1969); *Noble Drilling Corporation v. Smith*, 412 F.2d 952 (5th Cir. 1969), *cert. den.* 396 U.S. 906, 90 S.Ct. 221, 24 L.Ed.2d 182 (1969); *Kelley v. Mobil Oil Corporation*, 493 F.2d 784 (5th Cir. 1974), *cert. den.* 419 U.S. 1022, 95 S.Ct. 498, 42 L.Ed.2d 296 (1974).

> The third stage is amendment and embroidery, with consequent flabbiness and eventual obsolescence. The power of particular facts cannot be ignored. As new situations presenting appealing claims for seaman status have arisen, *Robison* has been amended to allow their inclusion. Such decisions in turn provide a basis for further amendment and embroidery, ultimately resulting in a fairly elaborate "gloss" on the original formulation. Once this happens, we have to much doctrine, inhibiting the ability of courts to resolve new situations on a principled basis and clouding counsel's ability to predict outcomes.[5]

In recent years, the flabbiness of *Robison* has been well-recognized. The Seventh Circuit in *Johnson v. John F. Beasley Construction*[6], and the Third in *Simko v. C&C Marine Maintenance Company*[7], are but two examples. Better ones, perhaps, come from the Fifth Circuit, free from criticisms by the *Amici* assigned to the Seventh Circuit's "relative lack of experience with seaman status issues."[8]

Since the Fifth Circuit's *en banc* opinion in *Barrett v. Chevron U.S.A., Inc.*,[9] it has grappled with many issues concerning status under the Jones Act, signalling the *Barrett* decision failed to fully raise the comfort level of all members of that Circuit. Within the body of the *Barrett* opinion itself, Judge Gee noted, in his concurrence:

[5] Robertson, A *New Approach to Determining Seaman Status*, 64 Texas L.R. 79 (1985).

[6] 742 F.2d 1054 (7th Cir. 1984).

[7] 594 F.2d 960 (3rd Cir. 1979).

[8] Brief of *Amicus* Louisiana Trial lawyers Association, at p. 13.

[9] 781 F2d 1067 (5th Cir. 1986).

> So long as Jones Act benefits are more attractive than those of other marine compensation schemes, astute counsel will seek to qualify their clients as "seamen." A bright-line rule is called for, one that nudges coverage back towards the blue-water sailors for whom the Jones Act was meant. The *Johnson* test is such a rule; I would adopt it if I could. But because it is more important to have a rule than to have the correct one, I concur.[10]

Little more than a year after *Barrett*, the Fifth Circuit changed its "analytical starting point" in *Pizzitolo v. Electro-Coal Transfer Corporation*[11] Judge Davis' opinion, instead of using the traditional *Robison* analysis, first turned to whether this ship breaker was covered under the LHWCA[12] and, thus, excluded under the Jones Act. After an exhaustive review of this Court's decisions and pertinent legislative action, he said:

> In summary, the efforts of Congress to cover harbor workers before 1927, the language of the 1927 LHWCA, the legislative history of the Act, and decisions of the Supreme Court after its enactment reflect who Congress intended to benefit when it adopted the LHWCA: the land-based harbor workers such as longshoremen and ship repairers who were injured on vessels and ineligible to recover state worker's compensation benefits. Congress distinguished seamen or vessel crew members from the land-based harbor workers and provided a distinct remedy for them in the Jones Act. *Pizzitolo*, at p. 982.

---

[10] *Barrett*, at p. 1076.

[11] 812 F.2d 977 (5th Cir. 1987).

[12] 33 U.S.C 1905, *et seq*.

So holding, the Court went on to say, at p. 983:

> The 1927 LHWCA, in effect, amended the Jones Act to make Jones Act benefits available only to maritime workers not covered by the LHWCA. . . . Given the explicit coverage of workmen engaged in the enumerated occupations, we reject the notion that Congress could have intended to exclude them from the benefits of the LHWCA as *members of the crew of a vessel*. In sum, we hold that because longshoremen, shipbuilders, and ship repairers are engaged in occupations enumerated in the LHWCA, they are unqualifiedly covered by that Act if they meet the Act's situs requirements. Coverage of these workmen by the LHWCA renders them ineligible for consideration as seamen or members of the crew of a vessel entitled to claim the benefits of the Jones Act. [Emphasis added]

Thus, after *Pizzitolo*, the Fifth Circuit could fairly be said to have abandoned its *Robison* test in favor of an "analytical starting point" in the definitions section of the LHWCA. But this was not apparent to all its members.

Just a year later, Judge Rubin found a worker on a construction barge, who was assigned to maintain the engines and other equipment, covered as a seaman, first directing his analysis to whether the worker met the test under *Robison-Barrett* and not whether he was a statutorily-defined longshoreman.[13] On *en banc* rehearing, the Court directed counsel as follows:

> In addition to briefing the issues raised by the parties and the panel opinion, the Court instructs that counsel should also discuss

---

[13] *LeGros v. Panther Services Group, Inc.*, 963 F.2d 345 (5th Cir. 1988).

> whether this Circuit should adopt a navigational-function test of seaman status in addition to or substitution for the *Robison* standard.[14]

The position of Respondent and the *amici*, then, that *Robison* is an "accepted test" is not supported by the facts. Neither is their attempt to draw Petitioner's analysis into "rough agreement"[15] that the Seventh and Third Circuits present the only markedly different "analytical starting point" from *Robison*. They are but two members of a chorus crying out for a uniform national rule.

Moby Dick Revisited: The Artificial Distinctions Between "Support Seamen" And "Mission Seamen": Pre-Jones Act Jurisprudence And This Court's Per Curiam Decisions

The briefs of the *amici*, particularly the ATLA, create artificial categories into which various maritime workers are placed, the object of the argument being Wilander's inclusion as a "mission seaman." This exercise is grounded in a hodgepodge of confusion which equates those traditional maritime activities long recognized as a part and parcel of commerce upon the waters of the world, and the particularized efforts of those such as Wilander whose contact with vessels is an incident of, rather than a *raison d'etre* of, his employment.

Justice Harlan's dissent in *Senko v. Lacrosse Dredging*[16] delineated the activities of persons aboard ship with

---

[14] *LeGros*, at p. 355; the case was settled before the *en banc* hearing.

[15] Brief of *Amicus* ATLA, at p. 25.

[16] 352 U.S. 370, 77 S.Ct. 415 (1957).

respect to whether their activities served the vessel *"as a vessel"*. This is the same approach which has traditionally been used, particularly in some of the older cases cited by the *amicus* ATLA. Thus, the bartender[17] who was kept as a member of the crew of the ship's time book; the cook[18] who signed Articles and rated as a seaman, although he refused to scrub down the sides of the ship; the cooper[19] who received "extraordinary compensation for his duties as a cooper, not as superseding, but as adding to the common seaman's duties," and was also treated in the shipping Articles as a seaman; the wireless operator[20] who signed on the ship's Articles, was classed as an officer, and messed with them; and the muleteer[21] who, in addition to those duties, served as a watchman, all had that common attachment to a ship which characterized the vessel's special mission, not in the same vein as a modern-day drilling platform, but as a means of transport over water. Professor Robertson's characterization, on equal footing, of the harpooner Queequeg with the sandblaster-painter Wilander, then, is obviously incorrect.

Without resort to citation, it may successfully be stated that some people are seamen, included fully under the provisions of the Jones Act, simply because they ought to be. Members of a fishing crew, serving a vessel in its maritime commerce mission of gathering the harvest of the sea, are, and should be, for policy reasons,

---

[17] *The J. S. Warden*, 175 F. 314.

[18] *Allen v. Hallett*, 1 F.Cas. 472.

[19] *United States v. Thompson*, 28 F.Cas. 102.

[20] *The BUENA VENTURA*, 243 F. 797.

[21] *The BARON NAPIER*, 249 F. 126.

which do not require explicit statement, included under the Act. There is no good reason Wilander should fall within the same zone of protection, since his duties, if any, in relation to the *GATES TIDE* are in no way similar, either in terms of attachment or mission, to Queequeg's vis-a-vis the *Pequod*.

To some extent, the same can be said for the LTLA's argument that the adoption of Petitioner's position would create "zones of protection" within which a participant on a voyage would walk in and out of Jones Act coverage. This is an incorrect reading of the law, and of Petitioner's brief. The fisherman is a seaman because of his duties, his attachment to the vessel, and the maritime nature of the vessel's mission. Once attaining this status, he does not lose it. The Court has recognized this many times, but none better than in *Braen v. Pfeifer Oil Transportation Co.*[22] There, Justice Douglas pointed out the obvious:

> At times, the work done by an employee will be crucial in determining what his status is for purposes of recovery [citing *Swanson, Grimes,* and *Butler,* all *infra*]. Those cases, however, are not relevant to our present problem since the question whether Petitioner's duties . . . were of the type to bring one *not otherwise a member of a ship's crew* within the scope of the Act is not presented in this case. Here we *start* with an employee who had the status of mate. The issue is whether Petitioner, a mate and therefore a "seaman," was injured "in the course of his employment."[23] [Emphasis supplied]

---

[22] 361 U.S. 129, 80 S.Ct. 247 (1959).

[23] *Braen,* at p. 249, 131-132.

Cooks, bartenders, waitress, hairdressers, doctors, coopers, muleteers, and seal-clubbers in the cases cited by the ATLA all attained status as seamen because of their connection to the vessel in question and its duties in maritime commerce. Per *Braen,* if personal injury had befallen them, whether in the service of the ship at sea or on land, their status would not have changed. Wilander's problem is that he never achieved the introductory level of status required for connection to the *GATES TIDE.*

Cases cited by *amici* in support of the proposition that this Court has created a uniform rule[24], while alleged to be expansions of the doctrine first espoused in *Senko,* are no more than manifestations of the base factual issues routinely found in "depressing litigation of this type."[25]

Although the decision in *Grimes* seems to be inapposite to the fact inquiry espoused by *Senko,* in reality, it is not. In traditional *Braen* terms, the Court could equally have concluded Grimes was a seaman because, during the three weeks it took to tow the Texas Tower to sea, he "with about 25 other workmen, lived on the tower and kept it in condition by operating air compressors, generators, and pumps to expedite installation at the permanent site, as well as by performing certain functions to keep it in safe tow,"[26] all traditional navigational functions.

---

[24] *Grimes v. Raymond Concrete Pile Company,* 356 U.S. 252, 78 S.Ct. 687, 2 L.Ed. 787; *Butler v. Whiteman,* 356 U.S. 271, 78 S.Ct. 734, 2 L.Ed.2d 754; *Gianfala v. Texas Company,* 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775.

[25] Gilmore and Black, *The Law of Admiralty,* at p. 328 (1975).

[26] *Grimes,* at p. 689, dissent of Justice Harlan.

If the tower was a vessel, then Grimes was certainly performing the navigational functions during the tow (which constituted the entire life of the tower as a vessel). In *Whiteman*, the plaintiff's decedent was engaged in activity including cleaning the boilers preparatory to a Coast Guard inspection, in a vessel which had been a "dead ship" for a year and had no Coast Guard certificate at the time of the accident. He had been employed as a laborer aboard a structure which, if it were classified as a vessel, clearly provided the necessary elements for him to meet the test of status under the Act.[27] And finally, *Gianfala*, which is cited by Judge Wisdom in *Robison* as establishing that a worker whose only connection with the vessel was related to the vessel's oil drilling activity, also performed these neglected navigational duties:

> He [Martin, the decedent] did not have anything to do as far as moving it [the vessel]. He raised it and that was all. In other words, he jetted it out, pumped the barge out, because the barge on location is sunk, and, after he gets ready to move the barge, it is pumped out, and it was his job of seeing to it that it was floated up and, when they got to the location, to sink it back right where it was supposed to be.[28]

The inescapable conclusion, then, is that *Senko's* fact-based inquiry is still the law. The problem with this formulation, as pointed out in Petitioner's original

---

[27] *Harris v. Whiteman*, 243 F.2d 563 (5th Cir. 1957).

[28] *Texas Company v. Gianfala*, 222 F.2d 382 (5th Cir. 1955), at p. 384, Footnote 2.

brief,[29] is the body of law which has developed to transform Jones Act cases from jury trials on all issues to jury trials on all issues which are not decided *as a matter of law*. Thus arises the frustration of jurists such as Judges Gee and Jones who, casting around for an accurate test, can find none other than *Johnson* which readily lends itself to a resolution of what can be close issues, and, when so applied, provides what Professor Robertson wants: the assurance of accurate and consistent results.

The Commerce Clause Argument Revisited: FELA, The LHWCA, And The Jones Act

In its brief, the LTLA suggests that the Jones Act and the LHWCA are "mutually exclusive,"[30] and goes on to suggest: "When faced with a question of whether an employee is covered under the LHWCA versus the Jones Act, the courts have applied the seaman status test to first determine whether Jones Act coverage applies."[31]

In addition to being a misstatement of the current "analytical starting point" espoused in *Pizzitolo, supra*, this defense to Petitioner's argument disregards the well-known fact of the use of mirror-image precedent between the LHWCA and the Jones Act."[32]

---

[29] At p. 29.

[30] LTLA *Amicus* Brief, p. 5.

[31] LTLA *Amicus* Brief, p. 7.

[32] Professor Robertson apparently agrees, citing *Swanson v. Marra Bros., Inc.*, 328 U.S. 1, 66 S.Ct. 869 (1946), for the proposition that the Jones Act and LHWCA "are intended to be mutually exclusive *in their spheres of coverage.*" Robertson, *Current Problems in Seamen's Remedies, Seaman Status, Relationship*

(Continued on following page)

Clearly, the FELA, Jones Act, and LHWCA are all passed pursuant to the Commerce Clause. The "commerce" regulated thereunder is treated differently, for some purposes, under those Acts, but they all, in the end, analyze the commerce to be regulated. Before the 1939 amendments to the FELA, railroad workers were subject to a "moment of injury" rule which has never been the case in the Jones Act (which provides for recoveries due to injuries received by a seaman "in the course of his employment"). Contrary to the LTLA's assertion that this contention is "specious"[33] and "entirely tangential,"[34] this analogy is narrowly drawn and forms the basis for an analysis of the inherent powers of congress to regulate matters making up "commerce." In *Swanson*[35] the Court explicitly recognized the connexity between the FELA, the LHWCA and the Jones Act, and correctly analyzed the occasions under which an employee would be covered depending on the situs of the injury and the relationship of the employee to maritime commerce.

The opinion by the *Swanson* Court also gives lie to the LTLA's position that the remedy, and the test for status, of those sought to be included within the Jones

---

(Continued from previous page)

Between Jones Act and LHWCA, and Unseaworthiness Actions by Workers Not Covered by LHWCA, 45 L.R. 875, at p. 893. [Emphasis supplied]

[33] LTLA *Amicus* Brief, p. 5.

[34] LTLA *Amicus* Brief, p. 8.

[35] *Swanson*, at p. 870, Footnote 32, *supra;* Gilmore and Black, Footnote 25, *supra*, at pp. 351-353.

Act is different from railroad workers under FELA. In fact, Chief Justice Stone acknowledged:

> It was thought that both the language and the policy of the Act indicated that by taking over principles for recovery already established for the employees of interstate railroads and in making them applicable in the admiralty setting, Congress intended to extend them to . . . the employees of an independent contractor, while working on a vessel in navigable waters and while rendering services customarily performed by seamen.

In further reviewing the Act's legislative history, the Court acknowledged Congress, in its passage, "was exercising its constitutional power to regulate commerce and to make laws which shall be necessary and proper to carry into execution powers vested by the Constitution in the Government or any department of it . . . " There, the lines were drawn as to what Congress could have intended subject to those restrictions, and in the scope of coverage of the Jones Act and the LHWCA.

In so doing, it noted "doubt" as to Congress' power to include within the scope of the Jones Act a remedy for "men . . . mainly employed in loading, unloading, refitting, and repairing ships . . . Injuries occurring in loading and unloading are not covered unless they occur on the ship or between the wharf and the ship, so as to bring them within the maritime jurisdiction of the United States."[36]

---

[36] *Swanson*, at p. 872.

After performing this analysis, the Court specifically ruled:

> We must take it that the effect of these provisions of the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters. . . . [S]ince this Act is restricted to compensation for injuries occurring on navigable waters, it excludes from its own terms *and from the Jones Act* any remedies against the employer for injuries inflicted onshore . . . and it leaves unaffected the rights of *members of the crew of a vessel* to recover under the Jones Act when injured while pursuing their maritime employment whether on board . . . or onshore.[37] [Emphasis supplied]

This analysis, echoed years later by the Fifth Circuit in *Pizzitolo*, makes clear that the LHWCA does contain limiting provisions upon the coverage of those claiming status under the Jones Act; and, as in *Braen*, recognizes an initial inquiry must also be made whether those seeming to fit definitions under the LHWCA have alternative remedies available to them as a member of the crew of a vessel plying in navigable waters.

Miscellany And Recent Circuit Court Jurisprudence Regarding Status

Petitioner took pains, both in its application and in brief, to draw the factual lines as narrowly as did the Circuit Court in its analysis of Wilander's status. Thus, it took at face value the factual recognition that Wilander fit the test for status under the *Robison-Barrett*, but did not

---

[37] *Swanson*, at p. 872.

under *Johnson*. However, both Respondent and *amicus* LTLA insist upon inserting entirely extraneous, and doubtful, evidence adduced at trial about Wilander's relationship with the piloting of vessels.

First of all, Wilander candidly admitted that he could not state he had ever piloted the *GATES TIDE*.[38] He later specifically acknowledged that his name was not listed as a member of the crew on board the *GATES TIDE*, and admitted that he did not assist in the navigation of the *GATES TIDE* during the period in question.[39]

This discourse was further complicated by Wilander's lack of memory. In fact, he also testified he did not recall the name of the vessel to which he claimed attachment as a member of the crew at the time of the accident.[40]

Even if he had navigated the vessel, the Circuit Court found, as did, by inference, the district court, that these duties were not assigned to him by his employer, a prerequisite for inclusion of those duties into the scope of his responsibilities in a Jones Act inquiry.

Another mistaken factual avenue is directed to the Court's attention by the *amicus* ATLA. Attempting to supplant *Robison* with his previously-voiced "perils of the sea" analysis,[41] Professor Robertson tries to change the "in aid of navigation" requirement consistently

---

[38] March 1988 Transcript, at pp. 168-181.

[39] March 1988, Transcript, at p. 224.

[40] March 1988, Transcript, at p. 160.

[41] Robertson, *supra*, at Footnote 5.

espoused by this Court to one where workers who are routinely exposed to the perils of the sea are included within coverage, without further inquiries.

In Wilander's case, this fails for two reasons. First, the dangers which he faced were primarily platform-based, as was the one which resulted in his injury. A hydrostatic test was being performed on a pipeline when a bolt blew out, striking him on the head. He was on the third deck of a tripod platform in the Persian Gulf when this occurred. Second, while Professor Robertson suggests that the causal connection of the injury was "muddled communications among vessels,"[42] the inadequacies of the crew apparently did not raise serious enough questions in Wilander's mind for his counsel to pursue an unseaworthiness remedy, which, if these facts were supported by the record, clearly would have required such a factual inquiry.

Two recent Fourth Circuit cases, and an opinion by Judge Jones of the Fifth Circuit on a panel she shared with Judge Higginbotham, reflect the modern view, and show why *Robison's* "flabby" reasoning has outlived its usefulness. In *Stephenson v. McClain Contracting Co.*,[43] the plaintiff was seeking status under the Act when injured while performing his duties as a construction worker on a crane barge, the *ANNAPOLIS*. Since it was recognized that his activities were primarily bridge construction, Stephenson was held not to be a seaman because those

---

[42] ATLA *Amicus* Brief, at p. 21.

[43] 863 F.2d 340 (4th Cir. 1988), *cert. den.* ___ U.S. ___, 109 S.Ct. 2110, 104 L.Ed. 2d 671 (1989).

duties "did not contribute directly or indirectly to the 'transportation function' of the vessel."[44]

Affirming that decision, the Fourth Circuit, in *Yoash v. McLean Contracting Company, Inc.*,[45] specifically examined the *Stephenson* opinion in light of *Robison-Barrett* as compared with *Johnson*, which led to this determination:

> The Court in *Stephenson* . . . refined and focused the second prong of the test to include consideration of a direct or indirect relation to the transportation function of the vessel in determining whether the worker's duties primarily served as an aid to navigation. The second prong of the test for determining seaman status under the Jones Act . . . is whether a worker's duties, when considered in the aggregate, serve naturally and primarily as an aid to navigation. In making the "aid to navigation" determination, a consideration of whether the duties primarily contribute, either directly or indirectly, to the transportation function of the vessel is appropriate.[46]

In *Ellender v. Kiva Construction & Engineering, Inc.*,[47] the Court primarily had under consideration the question of whether the structure upon which Ellender was working was a "vessel." His duties on the project involved pile driving, most of which was performed from a "spud barge," which, like an offshore drilling platform, is affixed in place on the bed of the waterway upon which it

---

[44] *Stephenson*, at p. 341.

[45] 907 F.2d 1481 (4th Cir. 1990).

[46] *Ibid*, at p. 1488.

[47] 909 F.2d 803 (5th Cir. 1990).

does its work by the use of movable legs. At the time of the accident, Ellender was working on a piling.

In reviewing other construction cases of this type,[48] the Court confirmed that the four-barge platform upon which plaintiff was working was not a vessel, even though part of its duties and responsibilities did require it, at some point, to either float on or be towed across navigable waters.

The Court's inquiry, at least peripherally, considers many of the navigational aspects of the instant case, although related in *Ellender* to the vessel and in *Wilander* to the worker himself. The consistent approach used by the *Ellender* and *Wilander* panels involves an analysis of the navigational functions the putative vessels, and the workers upon them, are designed to perform, and, by extension, the "commerce" in which they are engaged.

This modern view, which has routinely been accepted by the Fifth Circuit,[49] is facially inconsistent with this Court's opinion in *Grimes*, if *Grimes* is read narrowly to construe the worker there as what Professor Robertson would term a "mission seaman." Since the Fifth Circuit can only harmonize *Grimes*, not overrule it, it must be assumed the lesson taught by these decisions is that a navigational inquiry must form a portion of the Jones Act

---

[48] *Bernard v. Binnings Construction Company, Inc.*, 741 F.2d 824 (5th Cir. 1984); *Watkins v. Pentzien, Inc.*, 660 F.2d 604 (5th Cir. 1981), *cert. den.* 456 U.S. 944, 102 S.Ct. 2010, 72 L.Ed.2d 467 (1982); *Cook v. Belden Concrete Products, Inc.*, 472 F.2d 999 (5th Cir. 1973), *cert. den.* 414 U.S. 868, 94 S.Ct. 175, 38 L.Ed.2d 116 (1973).

[49] *See, Cook, Bernard,* and *Watkins,* Footnote 48 above.

inquiry, and when there are no other collateral facts which would make the subject worker a seaman under the Act, this navigational inquiry must be dispositive.

Thus, Grimes, who may have attained status on the voyage to his vessel's ultimate location, is covered. Yoash, Stevenson, and Ellender, never having acquired such status, are not.

CONCLUSION

Many interesting questions presented by the arguments made are not, perhaps, susceptible of resolution within the narrow confines of this case. Wilander had no alternative LHWCA remedy since he was not working within its jurisdictional confines, thus, *Pizzitolo* is of no use. He must not have considered himself subject to the "perils of the sea" in his everyday employment since he did not assess blame to his employer for an essential component of those perils, the unseaworthiness of a vessel or inadequacy of its crew. The vessel to which he claims attachment is not the same as the floating transport structures used in the construction cases cited in the preceding section, so that analysis is of no help.

Simply put, Wilander's status as a seaman stands or falls on the homogenization of 70 years of post-Jones Act jurisprudence, the most recent definitive pronouncement having been made by this Court in *Senko*.[50]

---

[50] Cited at Footnote 16, *supra*.

The application of a transportation function test in the rigid fashion recommended by *Johnson* perhaps is not the solution in every case; however, the rule of *Johnson* is not as draconian as is claimed by Wilander and his *amici*. Rather, it seems to be this: *Robison, Simko, Senko,* and *Johnson,* all present an "analytical starting point" from which to proceed. The end of an analysis made under any of these will, in clear cases, be the same.

But when the status of a particular worker is in question, *Johnson's* policy statement regarding transportation function as a determinative factor of his connection to the vessel is sound, and should be supported by this Court.

Respectfully submitted,

VOORHIES & LABBE'
(A LAW CORPORATION)

BY: /s/ James B. Doyle
JAMES B. DOYLE
700 St. John Street
Lafayette, LA 70501
Phone: (318) 232-9700

Counsel for Petitioner, McDermott International, Inc.

(5)

No. 89-1474

IN THE

Supreme Court of the United States

October Term, 1990

MCDERMOTT INTERNATIONAL, INC.,
Petitioner,

v.

JON C. WILANDER,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF ASSOCIATION OF TRIAL LAWYERS OF AMERICA AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

Michael C. Maher, Esq.
1050 31st St., N.W.
Washington, DC 20007
(202) 965-3500
President, Association of Trial Lawyers of America

David W. Robertson*
727 East 26th Street
Austin, Texas 78705
(512) 471-1124
Attorney for Amicus Curiae
*Counsel of Record

QUESTION PRESENTED

What criteria should determine whether a maritime worker is "any seaman" for purposes of the Jones Act, 46 U.S.C. §688(a)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page**

STATUTES

OTHER AUTHORITIES

INTEREST OF AMICUS CURIAE

This amicus curiae brief supports the position of Respondent. Letters on file with the Clerk of this Court show that all parties to this action have consented to its submission.

The Association of Trial Lawyers of America, with about 65,000 members, is composed principally of lawyers whose professional and political concerns center on the rights of injured persons. It tries to work with Congress, the state legislatures, and the courts to insure consistency and continuity in the law affecting the rights of injured persons, including injured seamen. The Association's interest in the present case is persuading the Court to adhere to its earlier decisions defining a "seaman."

SUMMARY OF ARGUMENT

The Jones Act (1920) was passed to overrule this Court's decision in *The Osceola* (1903) denying injured "seamen" a negligence action against their employers. The Act used the term "seamen" the same way *The Osceola* opinion used it. Judicial decisions contemporaneous with *The Osceola* show that "seamen" was generally understood to include *mission seamen* like the present plaintiff-respondent -- i.e., persons such as harpooners on whaling ships whose work on vessels was not centered on navigation or transportation but whose duties were nevertheless essential to the mission of the vessel and the voyage.

This Court's decisions interpreting the Jones Act term "any seaman" have been consistent with the pre-Jones Act jurisprudence in affording seaman status to *mission seamen* (such as offshore drilling barge workers, offshore pile-driving workers, and even handymen on essentially stationary dredges and harbor barges). In order to adopt

the position urged by defendant-petitioner this Court would have to overrule at least three of its previous decisions and disapprove the reasoning and language of a number of others.

All of the Courts of Appeals except the Seventh Circuit (and perhaps the Third) use a test for seaman status that is consistent with this Court's decisions interpreting the Jones Act and with the pre-Jones Act jurisprudence defining "seamen." That test was applied by the court below and should be retained. Congress has repeatedly acknowledged that the courts include *mission seamen* within the Jones Act's protection and has not seen fit to alter or disapprove that interpretation. The prevailing test for seaman status is well designed to afford the special protection of the Jones Act to those workers who confront the "unique hazards" of seaman's service while excluding other types of maritime workers from that protection. The Seventh Circuit's new test, urged by defendant-petitioner, would be demonstrably inferior in that respect. Adopting the Seventh Circuit's test--which cannot be reconciled with the pre-Jones Act jurisprudence defining "seamen" nor with this Court's decisions interpreting the Jones Act--would entail a radical change in the American maritime law, a profound departure from the "spirit of liberality" traditionally associated with the conception of seamen as "wards of the admiralty," and a significant detriment to maritime workplace safety.

ARGUMENT

1. Introduction: Ishmael and Queequeg.

A seaman injured in the course of employment may maintain a negligence action against the employer, whereas maritime workers who do not qualify as seamen are

normally restricted to remedies under workers' compensation statutes. "Determining the injured worker's status [as a seaman *vel non*] thus assumes paramount importance in a high percentage of the maritime personal injury and death cases that reach the courts."[1] Setting forth useful criteria for determining which maritime workers qualify as seamen is not a simple undertaking; "the myriad circumstances in which men go upon the water confront courts not with discrete classes of maritime employees, but rather with a spectrum ranging from the blue-water seaman to the land-based longshoreman."[2] Nonetheless, it is helpful to look for the bands on the spectrum. A vessel making a whaling voyage, for example, would likely have been served by four types of workers who might plausibly seek classification as seamen:

(a) *pure sailors*: those whose primary duties required them to "'hand, reef, and steer' [the vessel]--mariner[s] in the full sense of the word";[3]

(b) *support seamen*: those whose primary duties were for the support and nurture of the mariners and the vessel--e.g., the cook, carpenter, ship's doctor, cabin boy--"men [whose] actual jobs [had] nothing to do with making the vessel move [but who did] contribute to the functioning of the vessel *as a vessel*--as a means of transport on water;"[4]

---

[1]Robertson, *A New Approach to Determining Seaman Status*, 64 Tex. L. Rev. 79, 83 (1985).

[2]Brown v. ITT Rayonier, Inc., 497 F.2d 234, 236 (5th Cir. 1974).

[3]Hoof v. American Fisheries, 284 F. 174, 176 (W.D. Wash. 1922).

[4]Senko v. LaCrosse Dredging Corp., 352 U.S. 370, 377 n.5, 77 S. Ct. 415, 419 n.5 (1957)(Harlan, J., dissenting)(emphasis in original).

(c) *mission seamen*: the harpooners and coopers--workers whose principal duties involved neither "handing, reefing and steering" nor the nurture of those who did, but whose skills were nevertheless indispensable to the whaling vessel's mission as whaler;[5] and

(d) longshoremen, repairmen, and other harbor workers--land-based workers who serviced the vessel while it was moored or anchored in sheltered waters, and who remained ashore when the vessel went to sea.

The test for seaman status that emerges from this Court's relevant decisions (and that was applied by the court below) would treat the workers in the first three categories as seamen, excluding the fourth.

Defendant-petitioner urges the Court to adopt a new and much more restrictive test, one that would reliably include only the first group of workers (and arguably sometimes members of the second[6]) in the seaman category. Petitioner's test would flatly exclude the third group (into which the present plaintiff-respondent falls).

---

[5]In practice there was overlap among categories (a), (b), and (c). Support seamen and mission seamen would sometimes perform duties identical to pure sailors. On a freighter, a cook and a doctor would be support seamen; on a passenger liner, the same cook and doctor would be primarily mission seamen. A cooper on a whaling voyage would be a support seaman when concerned with the ship's water barrels and a mission seaman in his principal function of dealing with the ship's receptacles for whale oil. This functional overlap is itself an argument for an expansive test for seaman status; otherwise workers would be walking in and out of the coverage of the seamen's protections many times throughout the working day. Among other things, this would spawn a large number of niggling litigation points, and it would inordinately complicate the typical shipowner-employer's necessary insurance arrangements.

[6]See text and notes 93-95, *infra*.

Thus the present case calls upon the Court to choose between retaining the prevailing law on seamen's rights and adopting a new test, one that would accord Ishmael full rights as a seaman while relegating Queequeg[7] to landlubber status.[8]

2. *A Brief History of the Jones Act.*[9]

America's leading admiralty treatise demonstrates that "[t]he only purpose of the [1920] Jones Act was to remove the bar [to negligence suits by injured seamen against their employers] created by [this Court's 1903 decision in] *The Osceola*."[10] In *The Osceola* this Court (in an opinion by Justice Henry Billings Brown) had held:

> 3. That all the members of the crew, except, perhaps, the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of

---

[7]See H. Melville, *Moby Dick* (1851). From the standpoint of the whaling venture (if not the novel) Ishmael, a pure sailor, would have been easily replaced. Queequeg and the Pequod's other "harpooneers" -- mission seamen -- would have been very difficult to replace; while they were not aboard the vessel for nautical purposes, their skills were indispensable to the whaling mission. And they confronted the same dangers as Ishmael, plus some unique sea perils known only to harpooners.

[8]See Brief for Petitioner pp. 21-24 (arguing that plaintiff has no rights under maritime law, the Longshore Act, or the Outer Continental Shelf Lands Act). Presumably in petitioner's view plaintiff's rights would have to come from the Louisiana worker's compensation statute or the laws of Qatar.

[9]41 Stat. 1007 (1920), 46 U.S.C.A. §688(a).

[10]G. Gilmore and C. Black, *The Law of Admiralty* §6-21, pp. 328-29 (2d ed. 1975).

another member of the crew beyond the expense of [their] maintenance and cure.

4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident.[11]

The Jones Act was Congress's second effort to change the rule of *The Osceola*. The first effort--a 1915 statute providing that "in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority"[12] --was eviscerated by this Court's decision in *Chelentis v. Luckenbach S.S. Co.*[13] In response to *Chelentis* Congress passed the Jones Act--section 33 of the Merchant Marine Act of 1920--giving "any seaman who shall suffer personal injury in the course of his employment" a negligence action based on the principles of the Federal Employers' Liability Act. The Act does not define the term "any seaman," and there is no formal legislative history that would help define it. Given the Act's genesis, it is plain that Congress meant to use the term "seamen"in whatever way the courts had been using it.

---

[11]189 U.S. 158, 175, 23 S. Ct. 483, 487 (1903).

[12]Seamen's Act March 4, 1915, c. 153, §20, 38 Stat. 1164, 1185 (1915).

[13]247 U.S. 372, 38 S. Ct. 501 (1918). See the criticism of *Chelentis* in Gilmore & Black, *supra* note 10, §6-20, pp. 325-26.

3. The Pre-Jones Act Cases Defining "Seamen".

The meaning of "seamen" in the pre-Jones Act jurisprudence is well illustrated by a decision of the Fourth Circuit Court of Appeals affirming an award of damages under the 1915 statute during its brief lifetime. In *The Baron Napier*[14] the successful seaman plaintiff was a "muleteer" on a British steamship transporting mules for the Allies from Newport News to Egypt. Although the muleteer's "duties had only to do with the care of the mules, and were in no way connected with the navigation of the ship",[15] no one doubted that he was a seaman.

As *The Baron Napier* shows, the pre-Jones Act cases routinely treated *mission seamen* as full-fledged seamen at law, whether or not such men had incidental navigational duties. Isolated pre-1850 decisions denying libels for seaman's wages by a ship's surgeon,[16] musicians on a floating museum,[17] and a ship-keeper[18] are readily distinguishable. These cases were instances of reliance on restrictive and artificially narrow English precedents;[19]

---

[14]249 F. 126 (4th Cir. 1918).

[15]*Id.* at 127.

[16]Gardner v. The New Jersey, 9 F. Cas. 1192 (No. 5233) (D. Pa. 1806).

[17]Trainer v. The Superior, 24 F. Cas. 130 (No. 14,136) (E.D. Pa. 1834).

[18]Gurney v. Crockett, 11 F. Cas. 123 (No. 5874) (S.D.N.Y. 1849).

[19]Both *Gardner* (9 F. Cas. at 1194) and *Gurney* (11 F. Cas. at 124) explicitly relied on the English precedents. Later cases tying the early denials of seaman status to the discredited English view of admiralty jurisdiction include Miller v. The Maggie P., 32 F. 300, 301 (E.D. Mo.

these precedents were fully rejected by United States courts, across the board, by the close of the 19th century.[20] The overwhelming bulk of the pre-Jones Act cases were quite liberal in defining "seamen". In cases spanning the period 1781-1926[21] United States admiralty courts accorded seaman status to bartenders,[22] cabin boys,[23] carpenters,[24] chambermaids,[25] clerks,[26] cooks,[27] coopers,[28] divers,[29]

1887), and The J.S. Warden, 175 F. 314, 315 (S.D.N.Y. 1910).

[20]See D. Robertson, *Admiralty and Federalism* 28-64, 104-122 (1970).

[21]Summaries of these cases are set forth in chronological order in Appendix A, *infra*.

[22]The J.S. Warden, *supra* note 19.

[23]See The Ocean Spray, 18 F. Cas. 558, 560 (No. 10,412) (D. Ore.1876).

[24]See U.S. v. Thompson, 28 F. Cas. 102, 102 (No. 16,492) (C.C.D. Mass. 1832) (Story, J.); Trainer v. The Superior, *supra* note 17, 24 F. Cas. at 131; Wolverton v. Lacey, 30 F. Cas. 417, 418 (No. 17,932) (N.D. Ohio 1856).

[25]See The Minna, 11 F. 759, 760 (E.D. Mich. 1882).

[26]The Sultana, 23 F. Cas. 379 (No. 13,602)(D. Mich. 1857).

[27]Allen v. Hallett, 1 F. Cas. 472 (No. 223) (S.D.N.Y. 1849); Sageman v. The Brandywine, 21 F. Cas. 149 (No. 12,216) (D. Mich. 1852).

[28]U.S. v. Thompson, *supra* note 24 (Story, J.); Macomber v. Thompson, 16 F. Cas. 337 (No. 8919)(C.C.D. Mass. 1833)(Story, J.).

[29]The Murphy Tugs, 28 F. 429 (E.D. Mich. 1886) (Henry B. Brown, J.).

doctors,[30] dredge workers,[31] engineers,[32] firemen,[33] fishermen,[34] harpooners,[35] horsemen,[36] masons,[37] muleteers,[38] musicians,[39] pursers,[40] radio operators,[41] seal hunters,[42] stewards,[43] and waiters.[44] These *support seamen*

---

[30]Shaw v. The Lethe, 21 F. Cas. 1194 (No. 12,721) (Adm. Ct. Pa. 1781). See also U.S. v. Thompson, *supra* note 24, 28 F. Cas. at 102 ; Trainer v. The Superior, *supra* note 17, 24 F. Cas. at 131.

[31]Saylor v. Taylor, 77 F. 476 (4th Cir. 1896); The Hurricane, 2 F.2d 70 (E.D. Pa. 1924).

[32]The Virginia Belle, 204 F. 692 (E.D. Va. 1913).

[33]The North America, 18 F. Cas. 339 (No. 10,314) (E.D.N.Y. 1872).

[34]The Minna, *supra* note 25 (Henry B. Brown, J.); The Carrier Dove, 97 F. 111 (1st Cir. 1899).

[35]See The Ocean Spray, *supra* note 23, 18 F. Cas. at 560.

[36]U.S. v. Atlantic Transport Co., 188 F. 42 (2d Cir. 1911).

[37]The Canton, 5 F. Cas. 29 (No. 2388) (D. Mass. 1858).

[38]The Baron Napier, *supra* note 14.

[39]The Sea Lark, 14 F.2d 201 (W.D. Wash. 1926).

[40]The Wanderer, 20 F. 655 (C.C.D. La. 1880).

[41]The Buena Ventura, 243 F. 797 (S.D.N.Y. 1916).

[42]The Ocean Spray, *supra* note 23.

[43]Smith v. The Pekin, 22 F. Cas. 620 (No. 13,090) (E.D. Pa. 1831); Wolverton v. Lacey, *supra* note 24.

and *mission seamen* served on vessels of all kinds. Some of them had nautical duties, but many did not.[45]

Some of the opinions were eloquent on the reasons for adopting a broad view of the meaning of "seaman." In the seal hunter case, Judge Deady stated:

> It is admitted that such persons as surgeons, carpenters, cooks, stewards and cabin-boys are considered mariners. But it is claimed that this is so for the reason that these persons all aid in the navigation and preservation of the vessel. But I think the better reason is found in the fact that they are *co-laborers in the leading purpose of the voyage*. * * * Without these sealers the voyage must have been profitless, because the purpose of it could not have been accomplished. * * * [I]t would be impossible to give any sound reason why the cook, or even the sailors, on this vessel should have a lien upon her for their wages, and the sealers, upon who mainly depended the success of the voyage, should not.[46]

In upholding seaman status for a bartender in 1910, Judge Learned Hand distinguished the early restrictive cases on seaman status as reflecting the discredited English view and stated:

---

[44]See The Minna, *supra* note 25, 11 F. at 760.

[45]In The Ocean Spray, *supra* note 23, there was evidence that the seal hunters had "helped make and reef sail, heave the anchor and clear decks." 18 F. Cas. at 560. The court said that was irrelevant on the seaman status inquiry: "[E]ven if it be admitted that the libellants shipped and served as sealers only, they ought to be deemed mariners." *Id.*

[46]*Id.*

> I can see in principle no reason why there should be an artificial limitation of [seamen's] rights to those engaged in the navigation of the ship, to the exclusion of others who equally *further the purposes of the voyage....*"[47]

Several key opinions were written by Judge Henry Billings Brown, who (as Mr. Justice Brown) later wrote *The Osceola*.[48] In The Minna[49] (in which he held that a fisherman who "took no part in the navigation of the vessel"[50] was a seaman) Judge Brown mentioned the early restrictive view of seaman status and said the "sounder principle" was exemplified by cases like the seal hunter case:

> [A]ll hands employed upon a vessel, except the master, are entitled to a lien if their services are *in furtherance of the main object of the enterprise* in which she is engaged. Any other rule would put large classes of persons employed upon steam-boats outside the pale of admiralty law. * * * [I]f men should engage upon a whaling voyage solely for their skill in finding or catching whales, or trying out oil, they would be regarded as mariners, and be entitled to the same remedies as the crew, *though they took no part in the navigation of the ship*. The

---

[47]The J.S. Warden, *supra* note 19, 175 F. at 315; emphasis supplied.

[48]Of Judge/Justice Brown it has been stated: "No higher authority can be found respecting maritime matters." The Virginia Belle, *supra* note 32, 204 F. at 694.

[49]*Supra* note 25.

[50]11 F. at 759.

> test is whether the *services are for the benefit of a vessel engaged in commerce and navigation.*[51]

In The Murphy Tugs[52] Judge Brown held that a diver was a seaman and stated:

> All hands employed upon a vessel, except the master, [are] entitled to a lien [for seamen's wages], *if their services were in furtherance of the main object of the enterprise in which she was engaged.*[53]

These authoritative statements by the same judge who wrote the opinion that directly produced the Jones Act term "any seaman" ought to confirm beyond any question that *mission seamen* were meant to be included.

4. This Court's Seaman Status Decisions.

Seven years after enacting the Jones Act Congress passed the Longshore and Harbor Workers' Compensation Act,[54] which restricts maritime workers other than the "master or member of a crew of any vessel"[55] to a workers' compensation remedy. In *Swanson v. Marra Bros.* this Court

---

[51] *Id.* at 760; emphasis supplied.

[52] *Supra* note 29.

[53] 28 F. at 431; emphasis supplied.

[54] Pub.L.No. 69-803, ch. 509, 44 Stat. 1424 (1927), 33 U.S.C. §§ 901-950. In the interval this Court had treated longshoremen as Jones Act seamen. See International Stevedoring Co. v. Haverty, 272 U.S. 50, 47 S. Ct. 19 (1926); Northern Coal & Dock Co. v. Strand, 278 U.S. 142, 49 S. Ct. 88 (1928); Jamison v. Encarnacion, 281 U.S. 635, 50 S. Ct. 440 (1930); Uravic v. F. Jarka Co., 282 U.S. 234, 51 S. Ct. 111 (1931).

[55] 33 U.S.C. §902(3).

held that the Jones and Longshore Act are mutually exclusive remedy systems, such that the effect of the Longshore Act was to define the Jones Act term "any seaman" to mean a "master or member of a crew of any vessel."[56] Consequently the analysis in most of this Court's seaman status decisions is framed in terms of whether the injured worker was a "member of a crew of any vessel." This Court's seaman status jurisprudence consists of the *Haverty* line of cases,[57] *Swanson*, five additional full opinions, and four per curiam decisions. They add up to a "very expansive" concept of seaman status.[58]

In *Warner v. Goltra*, Justice Cardozo (for a unanimous Court) cited a "policy of liberal construction" of the Jones Act in aid of the conclusion that a tugboat master was a Jones Act seaman.

> In a broad sense, a seaman is a mariner of any degree, one who lives his life upon the sea. It is enough that what he does affects 'the operation and welfare of the ship when she is upon a voyage.' [Citing *The Buena Ventura*, *supra* note 41.][59]

The Court was again unanimous in *Norton v. Warner Co.* in holding that a general handyman who lived and worked aboard a barge, performing work connected with its maintenance and movement, was a seaman as a matter of law.

---

[56] 328 U.S. 1, 7, 66 S. Ct. 869, 872 (1946).

[57] See note 54, *supra*.

[58] Robertson, *supra* note 1, 64 Tex. L. Rev. at 85.

[59] 293 U.S. 155, 157, 55 S. Ct. 46, 47 (1934).

> Certainly members of the crew are not confined to those who can 'hand, reef and steer'. Judge Hough pointed out in *The Buena Ventura* [*supra* note 41] that 'every one is entitled to the privileges of a seaman who, like seamen, at all times contribute to the labor about the operation and welfare of the ship when she is upon a voyage.' We think that 'crew' must have at least as broad a meaning under the Act.[60]

In *Senko v. La Crosse Dredging Corporation* six members of the Court agreed that a jury verdict of seaman status should be upheld on behalf of a handyman who worked on a dredge securely anchored in a navigable river. The *Senko* plaintiff's work had been confined to maintaining the dredge while it was stationary--it had never moved during his tenure of employment--but he would have been involved had it ever moved. The core of *Senko* was characterization of the seaman status issue as a question of fact:

> Our holding [in *South Chicago Coal & Dock Co. v. Bassett* [*infra* note 67] that the determination of whether an injured person was a 'member of a crew' is to be left to the finder of fact meant that juries have the same discretion they have in finding

---

[60]321 U.S. 565, 572, 64 S. Ct. 747, 751 (1944) (citations omitted). An ostensibly limiting phrase with which the *Norton* Court was concerned--"naturally and primarily on board the vessel to aid in her navigation"--was evidently an inadvertent misquotation. In The Bound Brook, 146 F. 160, 164 (D. Mass.1906), a related idea had originated in this form: "When the 'crew' of a vessel is referred to, those persons are naturally and primarily meant who are on board her aiding in her navigation, without reference to the nature of the arrangements under which they are on board." See Judge J. Skelly Wright's demonstration in Perez v. Marine Transport Lines, 160 F. Supp. 853, 855 (E.D. La. 1958), that the "aid of navigation" test has always been "loose language."

> negligence or any other fact. The essence of this discretion is that a jury's decision is final if it has a reasonable basis, whether or not the appellate court agrees with the jury's estimate."[61]

In *Gianfala v. Texas Co*,[62] the injured worker was a member of an oilfield drilling crew assigned to a submersible drilling barge that was submerged and firmly secured to the bottom of a navigable bay. The barge ordinarily moved about once a year and the worker had never had any duties connected with its movement. The Fifth Circuit held that the worker was not a seaman. This Court granted certiorari, summarily reversed the Fifth Circuit, and ordered the reinstatement of a judgment for plaintiff based on a jury verdict that the worker was a seaman.

The plaintiff in *Grimes v. Raymond Concrete Pile Co.* was a pile driver. He worked ashore constructing a "Texas Tower"--a platform designed as a permanent offshore radar installation. He then lived and worked on the tower as it was towed 110 miles out to sea, and was hurt while thereafter engaged in the pile-driving operations necessary to secure the tower to the ocean floor. The First Circuit held as a matter of law that he was not a seaman. This Court granted certiorari and summarily reversed, stating that "the petitioner's evidence presented an evidentiary basis for a jury's finding whether or not the petitioner was a member of a crew of any vessel."[63]

In *Butler v. Whiteman*, the tug on which plaintiffs'

---

[61]352 U.S. 370, 374, 77 S. Ct. 415, 417 (1957).

[62]350 U.S. 879, 76 S. Ct. 141 (1955).

[63]356 U.S. 252, 253, 78 S. Ct. 687, 689 (1958).

decedent was working when he drowned had been immobilized at defendant's dock for at least ten months at the time of the injury. During all that time the deceased worker--whose employer owned a wharf, a barge, and the tug--had been doing odd jobs on the wharf. On the morning of the accident he was assigned to clean the tug's boilers and somehow fell overboard. The Fifth Circuit held that as a matter of law he was not a seaman. This Court granted certiorari and summarily reversed, stating that the evidence would support a jury finding that "the petitioner's decedent was a seaman and member of a crew of the tug within the meaning of the Jones Act...."[64]

Tipton v. Socony Mobil Oil Co. presented the seaman status issue tangentially. An oil field roughneck assigned to an offshore fixed platform, who sometimes worked on a nearby drilling barge, lost a Jones Act jury trial. His appeal to the Fifth Circuit urged that the trial judge had erred by admitting evidence of his accepting Longshore Act benefits. The Fifth Circuit rejected the appeal, concluding that this was harmless error. This Court granted certiorari and summarily reversed the Fifth Circuit, holding that "the jury was led to place undue emphasis on the availability of compensation benefits in determining the ultimate question of whether the petitioner was a seaman within the Jones Act."[65] Like this Court's other seaman status decisions, *Tipton* shows great solicitude for the rights of injured workers and a firm commitment to assigning the status issue to juries in all but the most marginal cases.

The foregoing seven decisions are indisputably expansive on the seaman status issue. Note that at least

[64]356 U.S. 271, 78 S. Ct. 734 (1958).

[65]375 U.S. 34, 37, 84 S. Ct. 1, 3 (1963).

four of them--*Senko*, *Gianfala*, *Grimes*, and *Tipton*--characterized mission seamen like the present plaintiff-respondent as Jones Act seamen. Only three decisions of this Court have ever concluded against seaman status, and these are readily distinguishable. *Swanson v. Marra Bros.*, *supra* note 56, held that an ordinary longshoreman was not a seaman. *Desper v. Starved Rock Ferry Co.*[66] held that a young man hired to repair sightseeing motorboats while they were blocked up on land for the winter was not a seaman. *South Chicago Coal & Dock Co. v. Bassett* held that a worker whose main duties centered on facilitating the flow of coal from a fuelling lighter to river steamboats was not excluded by the Longshore Act's "member of a crew of any vessel" language from the worker's compensation benefits he sought. In reaching that conclusion the *Bassett* Court cited the worker's lack of navigational duties but cautioned that it was construing *only* the Longshore Act and not "other statutes having other purposes."[67] *Bassett* was evidently premised on the view that some workers may qualify for benefits under either the Jones Act or the Longshore Act, at their option; note that it was decided before *Swanson v. Marra Bros.*, *supra* note 56, had held that the two statutes are mutually exclusive in their coverages.[68]

Like its decisions on other aspects of the Jones Act, this Court's seaman status decisions reflect the "spirit of

[66]342 U.S. 187, 72 S. Ct. 216 (1952).

[67]309 U.S. 251, 260, 60 S. Ct. 544, 549 (1940).

[68]For development of the view that *Bassett* is not a decision denying Jones Act seaman status, see Robertson, *supra* note 1, 64 Tex. L. Rev. at 86-88. Cases sharing that view of *Bassett* include Gahagan Const. Corp. Armao, 165 F.2d 301, 307 (1st Cir.), *cert. den.*, 333 U.S. 876 (1948), and Bowen v. Shamrock Towing Co., 139 F.2d 674, 675-76 (2d Cir. 1943).

liberality" that has always been associated with that statute and with seamen's rights generally.[69] In order to adopt the position urged by defendant-petitioner in the present case, this Court would have to forsake that spirit. More specifically, adopting defendant-petitioner's position would require the Court to completely disavow its decisions in *Senko*, *Gianfala*, and *Grimes*, as well as entailing radical surgery on the meaning of *Norton*, *Butler*, *Warner*, and *Tipton*.

5. Recent Legislative Activity Bearing On Jones Act Seaman Status.

a. The Tower Bill: On several occasions during the early 1970s Senator John Tower of Texas introduced legislation that would have taken mission seamen like the present plaintiff-respondent out of the category of seamen and placed them exclusively under the Longshore Act.[70] Despite full awareness of the dozens of judicial decisions treating offshore oil and gas workers as seamen, Congress never saw fit to enact such legislation.

b. The 1982 Amendment to the Jones Act: The original Jones Act is now 46 U.S.C. §688(a). A new subsection, 46 U.S.C. §688(b), was added in 1982 to preclude many alien workers engaged in oil and gas operations off the shores of foreign countries from receiving injury benefits under American law. The

---

[69]See Cortes v. Baltimore Insular Line, 287 U.S. 367, 375-77, 53 S. Ct. 173, 176 (1932); Bainbridge v. Merchants' & Miners' Transp. Co., 287 U.S. 278, 282, 53 S. Ct. 159, 160 (1932). Cf. Atchison, Topeka and Santa Fe Ry. Co. v. Buell, 480 U.S. 557, 562, 107 S. Ct. 1410 (1987).

[70]See 116 Cong. Rec. 31998 (Sept. 16, 1970); 117 Cong. Rec. 10490-91 (April 15, 1971).

legislative history[71] shows that Congress was fully aware that American oil and gas workers assigned to offshore structures and vessels often qualify as Jones Act seamen. Yet the 1982 Congress showed no disposition to alter any feature of American maritime law except its applicability to some alien offshore workers.

c. The Oceanographic Research Vessels Act.[72] "Vessels engaged in oceanographic research are operated by a crew that performs the duties usually assigned to seamen. These vessels also carry a complement of scientific personnel who are engaged in research and have nothing to do with the navigation or maintenance of the vessel."[73] Under the *mission seaman* jurisprudence discussed above, many of these scientists would have been classified as Jones Act seamen. In 1965 Congress enacted the Oceanographic Research Vessels Act (ORVA), one section of which provides that specified "scientific personnel" are not to be considered Jones Act seamen.[74] This Congressional action shows that Congress was aware of the inclusion of mission seamen within the coverage of the Jones Act *and* acquiesced in that jurisprudence except for the narrow "scientific personnel" exception specifically carved out by ORVA.

6. The Policy Justification For Providing Seamen More Personal Injury Protection Than Other Maritime Workers.

---

[71]The legislative history is set forth in some detail in Vaz Borralho v. Keydril Co., 710 F.2d 207, 209-13 (5th Cir. 1983).

[72]46 U.S.C. §§ 441-445.

[73]Sennett v. Shell Oil Co., 325 F. Supp. 1, 3 (E.D. La. 1971).

[74]46 U.S.C. §444. See Presley v. Vessel Caribbean Seal, 709 F.2d 406 (5th Cir. 1983), *cert. den.*, 464 U.S. 1038 (1984).

Congress has made the broad policy decision to protect seamen more fully than other maritime workers. To the extent that it has left "seamen" undefined it invites the courts to resort to that underlying policy in providing definitional lines. Repeatedly this Court and others have justified special doctrines protecting seamen by reference to the "unique hazards" of seamen's work.[75] Seamen's work exposes them to unique hazards of two types: those that might be lumped as "perils of the sea"[76] and those associated with the movement of vessels.

Four points need to be made about these unique seamen's hazards. First, mission seamen like the present plaintiff-respondent (and like Queequeg) confront these dangers every bit as severely, and often even more severely, than do more traditional mariners. Justice Marshall has noted this feature of offshore oil and gas work.[77] It has also

---

[75]Aguilar v. Standard Oil Co., 318 U.S. 724, 727, 63 S. Ct. 930, 932 (1943). For full development and citations to the decisional law justifying the Jones Act by reference to the unique seamen's hazards--perils of the sea and vessel-movement dangers--see Robertson, *supra* note 1, 64 Tex. L. Rev. at 80-81, 92, 96-100, 118-120.

[76]Seas Shipping Co. v. Sieracki, 328 U.S. 85, 104, 66 S. Ct. 872, 882 (1946) (Stone, C.J., dissenting); Mungia v. Chevron Co., USA, 675 F.2d 630, 633 (5th Cir. 1982) ("[T]he 'peril of the sea' . . . is the foundation of Jones Act coverage") (quoting Offshore Co. v. Robison, 266 F.2d 769, 771 (5th Cir. 1959).

[77]See Herb's Welding, Inc., v. Gray, 470 U.S. 414, 448-49, 105 S. Ct. 1421, 1440 (1985) (Marshall, J., dissenting from decision denying Longshore Act coverage to fixed-platform workers injured within a marine league from shore). See also Offshore Co. v. Robison, *supra* note 76, 266 F.2d at 780; Pure Oil Co. v. Snipes, 293 F.2d 60, 64-67 (5th Cir. 1961); Alston, *Admiralty Jurisdiction and Fixed Offshore Drilling Platforms: A Radical Plea Reconsidered*, 28 Loyola L. Rev. 379, 380, 408-09, 412-13 (1982). Even the strongest opponents of Jones Act coverage for offshore oil and gas workers are impressed with the great dangerousness of this work. See, e.g., Beer, *Keeping Up With The Jones Act*, 61 Tul. L. Rev. 379, 391, 395, 406 (1986).

been noted respecting deep-sea diving,[78] specialized anchor-handling work,[79] and the work of many other types of mission seamen.[80]

Second, the present plaintiff-respondent was hurt by a peril of the sea. The injury involved muddled radio communications among three vessels involved in defendant's operations, and occurred as follows (see Tr. July 26, 1988, Vol I, pp. 73, 140; Vol. II, pp. 293, 294, 306, 316-17; Vol. III, pp. 477, 478, 537, 540): Plaintiff was assigned to and working aboard the GATES TIDE, tied up at a small platform scheduled for painting. The JARMAC-8 was tied up to a larger platform eight or nine miles away across open water. Somewhere between the two (apparently not visible from either) was the DB-9. Captain Ronald E. Carl, the master of the DB-9, testified that he was in overall charge of defendant's operations in the area.

---

[78]See Wallace v. Oceancering Int'l, 727 F.2d 427 (5th Cir. 1984); Litherland v. Petrolane Offshore Const. Services, 546 F.2d 129 (5th Cir. 1977). See also The Murphy Tugs, *supra* note 29, in which Judge Henry Billings Brown treated a diver as a seaman.

[79]See Bertrand v. International Mooring & Marine, Inc., 700 F.2d 240 (5th Cir. 1983), *cert. den.*, 464 U.S. 1069 (1984).

[80]See Craig v. M/V Peacock, 760 F.2d 953, 957 (9th Cir. 1985) (Wisdom, J., dissenting from denial of unseaworthiness remedy to scientist on ORVA ship and pointing out that such men are often "exposed to greater perils of the sea than are traditional seamen"). See also Mahramas v. American Export Isbrandtsen Lines, Inc., 475 F.2d 165, 170 (2d Cir. 1973) (characterizing a beautician on a passenger liner as a seaman and explaining that "the remedies afforded by the Jones Act ... are designed to protect [all] those who perform services upon ships and are exposed to the unique hazards of work upon the sea").

He instructed plaintiff to leave the GATES TIDE and go onto the small platform to check a gas line for leaks. this was not part of plaintiff's regular work, but it was indisputably part of his "foreseeable shore duties."[81] Captain Carl's order to the plaintiff was improvident, because the gas line in question was then being hydrotested, creating the danger of a pressure blowout. It is considered dangerous even to go upon a platform where lines are being hydrotested. The hydrotesting procedure was being implemented and directed by Harold E. Morrell, Sr., working aboard the JARMAC-8. (Morrell testified that *he* was in charge of the operation.) Plaintiff talked by radio with both Carl and Morrell, but was not made aware of the danger of going on the platform and approaching the line. Carl and Morrell did not coordinate their orders and instructions to the plaintiff; Morrell testified that there was no radio contact between the DB-9 and the JARMAC-8. While plaintiff was testing the line, a pressure blowout occurred, injuring plaintiff's head. His injuries were thus the direct result of a failure of communications among vessels at sea.

Third, exposure to a potential tort action by the injured worker obviously gives the seaman's employer a much stronger incentive to reduce or eliminate those dangers than the obligation to carry workers' compensation insurance. This fact has figured prominently in congressional deliberations on the proper treatment of

---

[81]Webb v. Dresser Industries, 536 F.2d 603, 607 (5th Cir. 1976), *cert. den.*, 429 U.S. 1121 (1977)(holding that vessel sending seaman ashore in Alaska to pick up supplies was unseaworthy for not furnishing proper boots).

maritime worker injuries.[82]

Fourth, competing tests for defining seamen can usefully be compared by evaluating how well they result in affording the special seamen's protections to the workers who confront those "unique hazards" while denying those protections to other maritime workers. That evaluation is undertaken in the following two sections of this Brief.

7. The Virtues of the Fifth Circuit Test For Seaman Status.

The Fifth Circuit's test for seaman status was set forth in the en banc opinion in *Barrett v. Chevron, USA, Inc.*, as follows:

> There is an evidentiary basis for a Jones Act case to go to the jury: (1) if [in the context of the injured worker's entire employment with his current employer] there is evidence that the injured workman was assigned permanently to a vessel [or to a fleet of vessels, i.e., an identifiable group of vessels acting together or under one control] ... or performed a substantial part of his work on the vessel [or fleet]; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance

---

[82]See Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, Hearings on S. 2318, S. 525, and S. 1547 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong., 2d Sess., 579-80, 589, 608-09, 816-19 (1972); Longshoremen's and Harbor Workers' Compensation Act, Hearings on H.R. 247, H.R. 3505, H.R. 12006, and H.R. 15023 Before the Select Subcomm. on Labor of the House Comm. on Education and Labor, 92d Cong., 2d Sess., 249, 298-302, 322-27 (1972).

during its movement or during anchorage for its future trips.[83]

This test has been in place for over thirty years. It routinely excludes seaman status claims by land-based workers who do not confront the unique seamen's hazards.[84] It regularly assigns seaman status to workers who do confront those dangers.[85] The courts using the Fifth Circuit approach occasionally make explicit reference to the worker's

---

[83]781 F.2d 1067, 1073 (5th Cir. 1986) (en banc). The quoted test was taken verbatim from Offshore Company v. Robison, *supra* note 76, 266 F.2d at 779. The matter in the first set of brackets was the only change in the *Robison* test wrought by the *Barrett* opinion, 781 F.2d at 1075. The matter in the second set of brackets refers to the *Barrett* court's summary of post-*Robison* cases, *id.* at 1074.

[84]See the discussion and citations in Robertson, *supra* note 1, 64 Tex. L. Rev. at 96-106. Since that article was published seaman status has been denied on the basis of the *Robison/Barrett* test in at least two dozen appellate decisions. See, e.g., Gremillion v. Gulf Coast Catering Co., 904 F.2d 290 (5th Cir. 1990) (affirming summary judgment that a maintenance man on a seldom-moved housing barge used exclusively in shallow coastal and inland waters was not a seaman). Other recent appellate decisions using the *Robison/Barrett* test to deny seaman status are summarized in alphabetical order in Appendix B, *infra*. The bulk of these culminated in summary judgment for defendant. Perhaps a more informative test for seaman status--one that made explicit and controlling reference to whether the worker's duties involved significant exposure to the characteristic seamen's dangers--would have informed counsel of the futility of bringing these cases. See Robertson, *supra* note 1, urging such a modification of the Fifth Circuit test. On the other hand, curbing the natural zeal of advocates for injured persons may be beyond the restraining power of words. And in any event no sensible modification of the Fifth Circuit's test could legitimately exclude the present plaintiff-respondent--whose work regularly exposed him to the perils of the sea and to the dangers of vessel movement, and who was hurt in the present instance by a peril of the sea--from seaman status.

[85]See the discussion and citations in Robertson, *supra* note 1, 64 Tex. L. Rev. at 96-106. For more recent decisions see Appendix C, *infra*.

exposure to those dangers as a part of their test for seaman status or as a way of justifying particular applications of their test.[86] Usually they do not.[87] But study of the fact patterns and results of the reported cases confirms that the Fifth Circuit test works reasonably well in delimiting the class of workers who confront the unique seamen's hazards.

8. The Demerits of the Seventh Circuit Test.

The parties to the present case are in rough agreement that most of the circuits approach seaman status questions using the Fifth Circuit test or some minor modification thereof.[88] Only the Seventh Circuit clearly and markedly differs. Defendant-petitioner urges this Court to follow that circuit. In *Johnson v. John F. Beasley Const. Co.*, a panel of the Seventh Circuit acknowledged that Court's relative lack of experience with seaman status issues[89] but went on to create a dramatically new test for seaman status. The *Johnson* decision upheld summary judgment denying seaman status to an ironworker injured when his employer's tug ran into the construction barge on which he was working in the middle of the Illinois River. The court articulated its test for seaman status as follows:

---

[86]See text and notes 75-80, *supra*.

[87]See note 84, *supra*.

[88]See Brief for Petitioner at 24-26, showing that "[o]nly the Seventh Circuit has made a frontal assault on [the Fifth Circuit's] *Robison* [test]." See Robertson, *supra* note 1, 64 Tex. L. Rev. at 112-113, arguing that the Third Circuit's decision in Simko v. C&C Marine Maintenance Co., 594 F.2d 960 (3d Cir.), *cert. den.*, 444 U.S. 833 (1979), is broadly consistent with the Fifth Circuit's approach. Petitioner calls *Simko* a "babystep" away from the Fifth Circuit test. Brief for Petitioner 25.

[89]742 F.2d 1054, 1056 (7th Cir. 1984), *cert. den.*, 469 U.S. 1211 (1985).

> [W]e hold that in these equivocal situations there is an evidentiary basis for submitting to the jury the question whether the person was a member of the crew of a vessel at the time of the injury if: (1) the person injured had a more or less permanent connection with a vessel in navigation, and (2) the person injured made a significant contribution to the maintenance, operation, or welfare of the transportation function of the vessel."[90]

The *Johnson* test does not work very well.[91] There are at least three things wrong with it. First, it would exclude from the seamen's protections too many workers who confront the characteristic seamen's dangers in the course of their work, all day long and every day. No mission seamen--no diver, no harpooner, no drilling barge roughneck--could ever qualify. Thus it would cut out the workers who are often "exposed to greater perils of the sea than are traditional seamen"[92] and need these protections most.

Second, the *Johnson* test is frontally inconsistent with this Court's decisions in *Senko*, *Gianfala* and *Grimes*;

---

[90] *Id.* at 1062-63.

[91] For example, a district judge in the Seventh Circuit recently had to struggle to accord seaman status to a man who worked on and sailed with a fleet of four ferries. Estate of Rainsford v. Washington Island Ferry Line, 702 F. Supp. 718 (E.D. Wis. 1988). The court said the "facts of the case at hand do not lend themselves to an easy application of the Seventh Circuit test", *id.* at 722, was generally critical of that test, and found it necessary to resort to precedents from the Fifth Circuit in order to resolve the question presented. See *id.* at 722-24.

[92] Craig v. M/V Peacock, *supra* note 80, 760 F.2d at 957 (Wisdom, J., dissenting).

almost as clearly inconsistent with *Norton* and *Butler*; and demonstrably inconsistent with the spirit of *Warner* and *Tipton*. In fact, the *Johnson* case seems indistinguishable in any relevant way from the *dissent* in the *Senko* case.[93]

Third, it is somewhat vague and somewhat arbitrary. "Transportation function" was presumably chosen over "navigation function" to facilitate including people like ship's cooks and doctors, "bartenders and musicians on cruise ships, [and] maids and stewards on passenger ships" in the seaman class.[94] But no one can know whether a particular doctor or cook will be deemed to serve the assigned vessel's "transportation function" until litigating the point. And with what justification can it be said that the gourmet cook and the recreation director on a passenger liner serve their vessel's transportation function in a more legitimate sense than the WWI muleteer served the BARON NAPIER's, Queequeg the PEQUOD's, and Jon Wilander the GATES TIDE's? As Judge Learned Hand stated, there can be "in principle no reason"[95] for a rule that would extend the seamen's protections to bartenders and hairdressers while relegating Jon Wilander to the Louisiana workers' compensation statute or the laws of Qatar.

---

[93] Defendant-petitioner appears to concede this. See Brief for Petitioner 31-32.

[94] Brief for Petitioner 31, quoting Judge Wisdom's dissent in Craig v. M/V Peacock, *supra* note 80. Defendant-petitioner seems to agree that "transportation function" is meant to include such workers. See Brief for Petitioner at 31-32.

[95] The J.S. Warden, *supra* note 19, 175 F. at 315.

CONCLUSION

Congress, fully aware that the prevailing test for seaman status includes mission seamen like plaintiff-respondent, has not seen fit to amend the law. The test for seaman status applied by the court below has three virtues: (a) It is faithful to this Court's seaman status cases. (b) It is consistent with the pre-Jones Act cases defining "seamen". (c) It does a reasonably good job of fulfilling the policy of the Jones Act by delimiting the class of workers whose work significantly exposes them to the "unique hazards" of seamen's service. The test urged by petitioner fails on all three counts. Therefore this Court should affirm the decision below.

Respectfully submitted,

David W. Robertson
727 East 26th Street
Austin, TX 78705
(512) 471-1124
Attorney of Record for Amicus Curiae,
Association of Trial Lawyers of
America

August 29, 1990

APPENDIX

APPENDIX A
CHRONOLOGICAL TABLE OF PRE-JONES ACT SEAMAN STATUS CASES.

Shaw v. The Lethe, 21 F. Cas. 1194 (No. 12,721) (Adm. Ct. Pa. 1781): Without comment, a ship's surgeon was treated as entitled to a seaman's lien for wages.

Smith v. The Pekin, 22 F. Cas. 620 (No. 13,090) (E.D. Pa. 1831): Admiralty jurisdiction over a steward's claim for wages was upheld.

U.S. v. Thompson, 28 F. Cas. 102 (No. 16,492) (C.C.D.Mass. 1832): Justice Story, sitting on circuit, held that a cooper on a whaling voyage was a seaman for purposes of statutes penalizing revolt. Justice Story said that "a 'cooper' is a seaman in contemplation of law, although he has peculiar duties on board of the ship. ... A cook and a steward are seamen.... So a pilot, a surgeon, a ship-carpenter, and a boatswain, are deemed seamen...." *Id.* at 102.

Macomber v. Thompson, 16 F. Cas. 337 (No. 8919) (C.C.D.Mass. 1833): Here Justice Story partially allowed the same cooper's libel for wages.

Trainer v. The Superior, 24 F. Cas. 130 (No. 14,136) (E.D. Pa. 1834): The court rejected a libel for wages by musicians aboard a floating museum but stated that "[t]he courts ... have gone a great way in considering services on board of a vessel to be maritime, although, strictly speaking, the persons were not mariners, nor employed in the navigation of the vessel. Their *cooks, carpenters, stewards, and even surgeons have been allowed to sue in the admiralty as mariners* ...." *Id.* at 131; emphasis added.

Allen v. Hallett, 1 F. Cas. 472 (No. 223) (S.D.N.Y. 1849): For purposes of rules penalizing desertion, a cook on an ocean voyage was a seaman. "A cook ships and rates as a seaman.... He has also the privileges of a seaman, as to remedy against the ship for his cure in case of sickness, and his protection aboard if left by the vessel." *Id.* at 473.

Sageman v. The Brandywine, 21 F. Cas. 149 (No. 12,216) (D.Mich. 1852): A female cook had a lien for wages. "A cook on board of a vessel has been held to be a mariner. It matters not whether the cook is a male or female." Id. at 149.

Wolverton v. Lacey, 30 F. Cas. 417 (No. 17,932) (N.D.Ohio 1856): A female steward had a lien for wages. "It is now well determined that the term 'mariner' includes cooks, stewards, carpenters, coopers, and firemen as well as sailors. In fact, *all on board the vessel, employed in her equipment, her preservation, or the preservation of the crew, are denominated 'seamen.'* " *Id.* at 418; emphasis supplied.

The Sultana, 23 F. Cas. 379 (No. 13,602) (D.Mich. 1857): "The clerk of a steamboat is a mariner within the meaning of the law conferring a lien for wages." *Id.* at 379.

The Canton, 5 F. Cas. 29 (No. 2388) (D.Mass. 1858): Persons hired to load a vessel with stones, take her from Quincy to Boston, unload the stones, and use them to construct the wall of a wharf had a lien for wages.

The North America, 18 F. Cas. 339 (No. 10,314) (E.D.N.Y. 1872): A fireman on board a steamer was a seaman, entitled to a lien for wages and to maintenance and cure.

The Ocean Spray, 18 F. Cas. 558 (No. 10,412) (D.Ore. 1876): A group of 24 Indians hired by a vessel to hunt and kill fur seals were seamen entitled to a lien for wages. (So were the Indians' two interpreters.)

The Wanderer, 20 F. 655 (C.C.D.La.1880): A purser was held entitled to a lien for wages.

The Minna, 11 F. 759 (E.D. Mich. 1882): Judge Henry B. Brown held that a man who worked solely as a fisherman on a fishing voyage and who "took no part in the navigation of the vessel" was a seaman entitled to a lien for services.

The Murphy Tugs, 28 F. 429 (E.D. Mich. 1886): Judge Henry B.

Brown held that a deep-sea diver had a lien for wages because, under the principle of *The Minna*, *supra*, "all hands employed upon a vessel ... [are] entitled to a lien, if their services were in furtherance of the main object of the enterprise in which she was engaged." *Id.* at 431.

Saylor v. Taylor, 77 F. 476 (4th Cir. 1896): Workers on a steam dredge had a lien for wages. "[I]n all times and in all countries those who are employed upon a vessel in any capacity, however humble, and whose labor contributes in any degree, however slight to the accomplishment of the main object in which the vessel is engaged, are clothed by the law with the legal rights of mariners...." *Id.* at 479.

The Carrier Dove, 97 F. 111 (1st Cir. 1899): "Fishermen are seamen" and have a lien for their services. *Id.* at 112.

The J.S. Warden, 175 F. 314 (S.D.N.Y. 1910): Judge Learned Hand held that a bartender on a passenger vessel was a seaman and had a lien for his wages. Judge Hand stated: "I can see in principle no reason why there should be an artificial limitation of [seamen's] rights to those engaged in the navigation of the ship, to the exclusion of others *who equally further the purposes of the voyage*...." *Id.*at 315; emphasis added.

U.S. v. Atlantic Transport Co., 188 F. 42 (2d Cir. 1911): "Horsemen, signed for service on a vessel in caring for horses during a voyage, [were] 'seamen'" for purposes of immigration acts. *Id.* at 42 (headnote).

The Virginia Belle, 204 F. 692 (E.D. Va.1913): Engineer on small fishing boat had seaman's lien for wages.

The Buena Ventura, 43 F. 797 (S.D.N.Y. 1916): A wireless telegraph operator on an ocean vessel was a seaman and had a lien for maintenance and cure. "[E]very one is entitled to the privilege of a seaman who, like seamen, at all times contribute to and labor about the operation and welfare of the ship when she is upon a voyage." *Id.* at 799.

The Baron Napier, 249 F. 126 (4th Cir. 1918): On a vessel

conveying mules to the Allies in Egypt a muleteer, whose "duties had only to do with the care of the mules, and were in no way connected with the navigation of the ship", was a seaman under the 1915 statute granting a negligence action. *Id.* at 127.

The Hurricane, 2 F.2d 70 (E.D. Pa. 1924): "Chief operator" and "dipper tender" on dredge were seamen entitled to a lien for wages.

The Sea Lark, 14 F.2d 201 (W.D. Wash. 1926): Members of orchestra on excursion boat were seamen, entitled to a lien for wages.

APPENDIX B
RECENT COURT OF APPEAL DECISIONS DENYING SEAMAN STATUS ON THE BASIS OF THE FIFTH CIRCUIT'S ROBISON/BARRETT TEST.

1.Cases Affirming Summary Judgment That P Was Not a Seaman:

Ardleigh v. Schlumberger Ltd., 832 F.2d 933 (5th Cir. 1987): Itinerant wireline operator who did short jobs on a variety of vessels and platforms.

Ducreport v. Baton Rouge Marine Enterprises, Inc., 877 F.2d 393 (5th Cir. 1989): Shorebased ship repairer.

Gremillion v. Gulf Coast Catering Co., 904 F.2d 290 (5th Cir. 1990): Maintenance man on seldom-moved housing barge used exclusively in shallow coastal and inland waters.

Johnson v. ODECO Oil and Gas Co., 864 F.2d 40 (5th Cir. 1989): Worker assigned to stationary offshore oil production platform and storage facility.

Ketnor v. Automatic Power, Inc., 850 F.2d 236 (5th Cir. 1988): Service technician whose job was to check and repair navigational aids (lights and horns) on oil and gas wells in the Gulf of Mexico and Louisiana inland waters.

King v. Universal Elec. Construction, 799 F.2d 1073 (5th Cir. 1986): Electric construction lineman killed building a line across a navigable river.

Langston v. Schlumberger Offshore Services, Inc., 809 F.2d 1192 (5th Cir. 1987): Very similar to *Ardleigh*, *supra*.

Lirette v. N.L. Sperry Sun, Inc., 831 F.2d 554 (5th Cir. 1987): Very similar to *Ardleigh*, *supra*.

Lormand v. Superior Oil Co., 845 F.2d 536 (5th Cir. 1987), *cert. den.*, 484 U.S. 1031 (1988) (Justices White and Blackmun dissented from the denial of certiorari): Welder who spent about 15% of his work time on offshore special purpose vessels and the rest on land.

New v. Associated Painting Services, Inc., 863 F.2d 1205 (5th Cir. 1989): Sandblaster/painter, assigned willy-nilly to short jobs on a variety of vessels and stationary platforms.

Reynolds v. Ingalls Shipbuilding Div., 788 F.2d 264 (5th Cir.), *cert. den.*, 479 U.S. 885 (1986): Shipfitter hurt during sea trials.

Smith v. Nicklos Drilling Co., 841 F.2d 598 (5th Cir. 1988): Mechanic, formerly assigned to barge, but shortly before injury permanently reassigned to land rig.

Waguespack v. Aetna Life & Cas. Co., 795 F.2d 523 (5th Cir. 1986), *cert. den.*, 479 U.S. 1094 (1987): Worker whose job was to handle the covers of grain barges in unloading slip.

Williams v. Weber Management Services, Inc., 839 F.2d 1039 (5th Cir. 1987): Barge repairman.

2. Cases Culminating In Denial of Seaman Status In Other Procedural Contexts:

Chauvin v. Sanford Offshore Salvage, Inc., 868 F.2d 735 (5th Cir. 1989): Affirms bench trial judgment denying seaman status to worker on derrick barge used to move equipment from salvage yard to dock.

Daniel v. Ergon, Inc., 892 F.2d 403 (5th Cir. 1990): Reverses trial judge for failing to give summary judgment or directed verdict against seaman status of man who cleaned barges moored to river bank.

Garrett v. Dean Shank Drilling Co., Inc., 799 F.2d 1007 (5th Cir. 1986): Reverses trial judge for failing to give summary judgment or directed verdict against seaman status of roustabout hurt building a drilling rig on a barge moored in navigable water.

Graham v. Milky Way Barge, Inc., 824 F.2d 376 (5th Cir. 1987): Upholds judgment on jury verdict denying seaman status to painter/sandblaster assigned to a fixed offshore platform and housed on an auxiliary vessel.

Kerr-McGee Corp. v. Ma-Ju Marine Services, Inc., 830 F.2d 1392 (5th Cir. 1987): Affirms directed verdict denying seaman status to switcher who did short jobs on many offshore platforms, being ferried among them by "maritime taxi".

Miller v. Patton-Tully Transp. Co., Inc., 851 F.2d 202 (8th Cir. 1988): Affirms bench trial judgment denying seaman status to dozer operator on riverbank stabilization project who sometimes worked on barges at the bank.

Miller v. Rowan Companies, 815 F.2d 1021 (5th Cir. 1987): Affirms judgment NOV denying seaman status to fishing tool supervisor assigned to a fixed platform, who ate and slept on auxiliary vessel.

Theriot v. Bay Drilling Corp., 783 F.2d 527 (5th Cir. 1986): Affirms judgment on jury verdict denying seaman status to torque wrench operator who sometimes worked on land and sometimes on drilling barges, and who was hurt on a drilling barge in Galveston Bay.

APPENDIX C
RECENT COURT OF APPEAL DECISIONS UPHOLDING SEAMAN STATUS.

Complaint of Patton-Tully Transp. Co., 797 F.2d 206 (5th Cir. 1986): Affirms bench trial judgment affording seaman status to a worker assigned to a fleet of vessels operated on the Mississippi River by a timber-hauling and river salvage company.

Leonard v. Dixie Well Service & Supply, 828 F.2d 291 (5th Cir. 1987): Reverses summary judgment that had denied seaman status to a man who testified he spent 70% of his work time on an offshore drilling vessel.

Petersen v. Chesapeake & Ohio Ry. Co., 784 F.2d 732 (6th Cir. 1986): Affirms judgment on jury verdict affording seaman status to a machinist who worked on a fleet of car ferries sailing between Great Lakes Ports.

Pickle v. International Oilfield Divers, 791 F.2d 1237 (5th Cir.), *cert. den.*, 479 U.S. 1059 (1986) (Justice White and Chief Justice Rehnquist dissented from denial of certiorari): Affirms bench trial judgment affording seaman status to deep-sea diver assigned to barge.

Smith v. Odom Offshore Surveys, 791 F.2d 411 (5th Cir. 1986): Affirms bench trial judgment affording seaman status to member of Mississippi River hydrographic survey crew (defendant had not designated its vessels under the procedure set forth in ORVA, *supra* text and notes 72-74).

Thibodeaux v. Torch, Inc., 858 F.2d 1048 (5th Cir. 1988): Reverses summary judgment that had denied seaman status to a crane operator assigned to an offshore pipelay barge.

(9)

No. 89-1474

In the Supreme Court of the United States

October Term, 1990

MCDERMOTT INTERNATIONAL, INC.

Petitioner

vs.

JON C. WILANDER

Respondent

On Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

AMICUS CURIAE BRIEF ON THE MERITS IN SUPPORT OF RESPONDENT

On Behalf Of

LOUISIANA TRIAL LAWYERS ASSOCIATION (LTLA)

RICHARD J. ARSENAULT
NEBLETT, BEARD & ARSENAULT
Post Office Box 1190
Alexandria, Louisiana 71309-1190
BAR ROLL # 2563
Counsel of Record for
Amicus Curiae (LTLA)

QUESTION PRESENTED

Seaman status under the Jones Act, 46 U.S.C. § 688; Will this Court reject its current test as presently articulated by the Fifth Circuit in exchange for a new test established by the Seventh Circuit which is inconsistent with decades of jurisprudence and legislative intent?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

INTEREST OF AMICUS CURIAE

The Louisiana Trial Lawyers Association is composed of approximately 2,000 lawyers engaged in litigation practice.

This Amicus Curiae brief, presented on behalf of the Louisiana Trial Lawyers Association, supports the position of Respondent. All parties to this action have consented in writing to its submission; letters are on file with the Clerk.

The purpose of this brief is to persuade the Court to maintain the existing test for seaman status which has served the marine industry well for decades.

It is interesting to note that, as of this date, no Amicus Curiae briefs have been presented which support the Petitioner's position. If the current test was either inequitable or unduly cumbersome, surely this would have been recognized as an opportunity to express that view.

SUMMARY OF ARGUMENT

This case involves the recurring question of what exactly is required to attain seaman status under the **Jones Act**? [1] Specifically, this Honorable Court is being called upon to abandon its longstanding test, generally followed by every circuit save one,[2] and in its place adopt

---

1. 46 U.S.C. § 688.
2. See ATLA brief at pp. 2, 23-25; and Petitioner's brief at pp. 24-26.

the Seventh Circuit test which aberrantly requires participation in a vessel's transportation function. Essentially, the battle line has been drawn between this Court's established case law, as embodied in the current Fifth Circuit rule,[3] and the new Seventh Circuit rule.[4]

The Jones Act provides seamen who suffer personal injury in the course of their employment with an action for damages. While the term "seaman" is specifically contained in the Act, no statutory definition is provided for what is required to achieve that status.

Whatever clarity the term "seaman" presently enjoys has developed through an evolutionary, case-by-case process, assisted by some related legislative developments that have occurred since 1920 when the Jones Act was enacted.[5]

Recognizing the numerous developments in vessel design and function, the Fifth Circuit, for the past 30 years, has employed a test which confers seaman status to a worker whose duties contribute to the function of the vessel, the accomplishment of its mission, or its operation or welfare.[6] The Fifth Circuit's test is based upon and consistent with this Court's numerous rulings on the status issue.[7]

In contrast, the Seventh Circuit's test restricts seamen status to those workers whose duties are directly

---

3. *See Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959).
4. *See Johnson v. John F. Beasley Construction Co.*, 742 F.2d 1054 (7th Cir. 1984), *cert. denied*, 469 U.S. 1211, 105 S.Ct. 1180 (1985).
5. *See* ATLA brief at pp. 17-19.
6. *See Robison, supra* at note 3.
7. *See* notes 37-40, *infra*.

related to the transporation function of the vessel.[8] The Seventh Circuit's test is inconsistent with articulated congressional intent and, more importantly, with this Court's jurisprudence.

The LTLA has carefully studied the brief submitted by the ATLA and adopts the arguments contained therein. The fact that those issues are not addressed in this brief is not intended in any way to detract from the points made in the ATLA brief. However, it was felt that this Court would be best served by something other than a "me too" brief and, therefore, this brief will be limited to the specific issues raised by the petitioner.

ARGUMENT

(1) THE JONES ACT; EXPANSIVE CONSTRUCTION REQUIRED

The Jones Act is remedial legislation which must be liberally construed in favor of enlarging the protection of seamen.[9]

In passing the Jones Act, Congress did not intend to create a static remedy, but one which would respond to meet changing conditions and the commensurate responsibility of the maritime industry toward its vessel based workers.[10]

---

8. *See Johnson, supra* at note 4.
9. *See Cox v. Roth*, 348 U.S. 207, 75 S.Ct. 242, 99 L.Ed. 260 (1954); *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 69 S.Ct 1317, 93 L.Ed 1692 (1949); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct 246, 87 L.Ed. 239 (1942); *Socony-Vacuum Oil Co. v. Smith*, 305 U.S. 424, 59 S.Ct. 262, 83 L.Ed. 265 (1939); and *The Arizona v. Anelich*, 298 U.S. 110, 56 S.Ct 707, 80 L.Ed 1075 (1936).
10. *Kernan v. American Dredging Co.*, 355 U.S. 426, 431-32, 78 S.Ct. 394 (1958).

Thus, as Judge Wisdom expressed in *Offshore Co. v. Robison*:[11]

> There is no reason for lamentations. Expansion of the terms "seaman" and "vessel" are consistent with the liberal construction of the Act that has characterized it from the beginning and is consistent with its purposes. Within broad limits of what is reasonable, Congress has seen fit to allow juries to decide who are seamen under the Jones Act. There is nothing in the Act to indicate that Congress intended the law to apply only to conventional members of a ship's company. The absence of any legislative restriction has enabled the law to develop naturally along with the development of unconventional vessels, such as strange-looking specialized watercraft designed for oil operations offshore and in the shallow coastal waters of the Gulf of Mexico. [12]

(2) THE "MARITIME EMPLOYMENT" RED HERRING

The petitioner attempts to use the Jones Act and Longshore Act's[13] common heritage, based upon the Commerce Clause, to borrow the Longshore Act's "maritime employment"[14] jurisdictional requirement and make it an element of the test for seaman status under the

11. *Supra* at note 3.
12. *Id.* at 780.
13. 33 U.S.C. §§ 901 et seq..
14. 33 U.S.C. § 902 (3).

Jones Act. This contention is clearly specious. While the Commerce Clause confers congressional authority to enact legislation regulating activity that has a substantial effect on interstate commerce, it does not mandate that all legislation passed under its purview be co-extensive. Quite to the contrary, this Court has specifically held that the LHWCA and the Jones Act are mutually exclusive.[15]

The Jones Act permits recovery for "*[a]ny seaman*" injured in the course of his employment,[16] whereas the LHWCA extends to persons "*engaged in maritime employment*"; but, "*a master*" or "*member of a crew of any vessel*" is specifically excluded from LHWCA coverage.[17]

Despite this mutual exclusivity, the petitioner contends that this Court's decisions in *Rodrigue v. Aetna Casualty and Surety Co.*[18] and *Herb's Welding, Inc. v. Gray*[19] somehow have undermined the Fifth Circuit's test in *Robison.*[20] First, neither one of these decisions deals with the Jones Act and, therefore, these cases have no persuasive value in that regard. Second, the petitioner erroneously interprets *Herb's Welding* to mean that **all** "oilpatch" activity is non-maritime in nature no matter where the activity takes place. This Court did not even remotely suggest, much less hold, that workers engaged in offshore drilling on a floating or floatable contrivance were not seamen and/or were not engaged in "maritime employment". What this Court did hold was that a

15. *Swanson v. Marra Bros., Inc.*, 328 U.S. 1, 66 S.Ct. 869, 90 LEd 1045 (1946).
16. *See* Jones Act, 46 U.S.C. § 688 (a).
17. *See* LHWCA, 33 U.S.C. § 902 (3)(G).
18. 395 U.S. 352, 89 S.Ct. 1835, 23 LEd. 2d 360 (1969).
19. 470 U.S. 414, 105 S.Ct. 1421, 84 LEd 2d 406 (1985).
20. *Supra* at note 3.

stationary platform based employee, performing oilpatch activities in state waters, was not engaged in "maritime employment" for purposes of the LHWCA.[21]

The petitioner exploits its misinterpretation of *Herb's Welding* by asking this Court to use the LHWCA's concept of "maritime employment" as the vehicle to determine seaman status under the Jones Act. However, the LHWCA's "maritime employment" concept has never been and cannot be used as a criteria for determining seaman status.

According to this Court, the 1972 amendments to the LHWCA, which include a provision making the Act applicable to *"any person engaged in maritime employment"*,[22] were soley intended to delineate the scope of LHWCA coverage landward of the water's edge.[23] The "maritime employment" concept was not meant to apply seaward of that line to determine LHWCA coverage much less seaman's status.[24]

In fact, this Court has held that in construing the LHWCA's terms, other statutes having other purposes are of little aid.[25] Likewise, using this reasoning, in construing the Jones Act, the LHWCA is neither controlling nor instructional. Illustrative is the fact that even basic terms such as "vessel" and "in navigation" enjoy

21. *See Herb's Welding, supra* at note 19.
22. 33 U.S.C. § 902 (3) (emphasis added).
23. *See Director, OWCP v. Perini North River Associates,* 459 U.S. 297, 103 S.Ct. 634, 74 L.Ed. 2d 465 (1983); and *Northeast Marine Terminal Co. v. Caputo,* 432 U.S. 249, 97 S.Ct. 2348, 53 L.Ed. 2d 320 (1977).
24. *See Director, OWCP v. Perini, supra* at note 23; and *Legros v. Panther Services Group, Inc.,* 863 F.2d 345 (5th Cir. 1988).
25. *South Chicago Dock Co. v. Bassett,* 309 U.S. 251 (1940).

different meanings under the Jones Act and under the LHWCA. Specifically, the Jones Act definition of the "vessel" cannot be substituted for the word "vessel" in Section 905(b) of the LHWCA.[26] Furthermore, the test of whether a vessel is "in navagition" under the Jones Act is different than the test of "vessel" status under Section 905(b).[27]

When faced with the question of whether an employee is covered under the LHWCA versus the Jones Act, the courts have applied the seaman status test to first determine whether Jones Act coverage applies.[28] Therefore, a plaintiff is not afforded remedies under the LHWCA unless he is unable to demonstrate that a factual issue exists as to whether or not he is a seaman.[29]

(3) UNDER NEW TEST SEAMAN WOULD WALK IN AND OUT OF COVERAGE AND FELLOW CREWMEMBERS WOULD HAVE DIFFERENT REMEDIES

The strict aid in navigation test espoused by the petitioner would require the worker to serve some

26. *See Orgeron v. Avondale Shipyards, Inc.,* 561 So. 2d 38 (La. 1990).
27. *See Hall v. Hvide Hall No. 3,* 746 F.2d 294 (5th Cir. 1984), *cert. denied,* 474 U.S. 820, 106 S.Ct. 69, 88 L.Ed. 2d 56 (1985).
28. *See, e.g., Salgado v. M.J. Rudolph Corp.,* 514 F.2d 750,755 (2d Cir. 1975); *Simko v. C & C Marine Maintenance Co.,* 594 F.2d 960 (3d Cir.), *cert. denied,* 444 U.S. 833, 100 S.Ct. 64, 62 L.Ed. 2d 42 (1979); *McDermott v. Boudreaux,* 679 F.2d 452 (5th Cir. 1982); *Slatton v. Martin K. Eby Construction Co.,* 506 F.2d 505 (8th Cir. 1974), *cert. denied,* 421 U.S. 931, 95 S.Ct. 1657, 44 L.Ed 2d 88 (1975); and *Estate of Wenzel v. Seaward Marine,* 709 F.2d 1326 (9th Cir. 1983).
29. *See Buras v. Commerical Testing & Engineering Co.,* 736 F.2d 307, 309 (5th Cir. 1984); and *Petersen v. Chesapeake and Ohio Railway Co.,* 784 F.2d 732, 739 (6th Cir. 1986).

transporation function to attain seaman status. Incorporation of such a test would create the undesirable situation where a worker would walk in and out of Jones Act coverage depending on the task to which he is assigned. This would also lead to the inequity of two workers on the same vessel, both exposed to the same hazards incident to employment aboard the vessel, being afforded different remedies, depending on who, at any given time, was incidentally participating in navigation functions. Certainly, this is not the kind of uniformity and consistency Congress wanted to promote.

The record in the instant case indicates that Wilander piloted the boat at times. If he had been injured while doing that task, he would be covered under the Seventh Circuit's test. Thus, under the new test proposed by the petitioner, Wilander would be walking in and out of Jones Act coverage depending upon what he was doing at the moment of injury. It is inconsistent with the purpose of the Jones Act to make a rule related to the nature of the claimant's specific assignment at the time of injury while completely ignoring the maritime perils which **everyone** employed aboard the vessel is exposed to. The Act simply does not support such a narrow reading. In fact, once seaman's status is achieved, coverage is afforded regardless of where an accident occurs, even shoreside.[30]

(4) THE FELA ARGUMENT

The petitioner makes an entirely tangential analogy between maritime commerce (with coverage under

30. *O'Donnell v. Great Lakes Dredge and Dock Co.*, 318 U.S. 36, 63 S.Ct. 488, 87 L.Ed. 596 (1943).

the Jones Act) and interstate commerce (with coverage under the Federal Employers Liability Act[31] ("FELA")). The petitioner incorrectly maintains that the Jones Act and the FELA are parallel with regard to a requirement that there be at least some connexity between a claimant's employment function and transportation. The petitioner mistakenly arrives at this conclusion, ostensibly, from jurisprudence holding that the Jones Act was intended to provide the same remedy to seamen that railroad employees are afforded under the FELA.[32] However, the obvious differences, readily apparent from the language of the acts and the function of railcars versus vessels, render petitioner's argument untenable. The FELA provides:

> [e]very common **carrier** by railroad **while engaged in commerce between any of the several States**...or between...any of the States...and any foreign nation or nations, shall be liable in damages to any person suffering injury **while he is employed by such carrier in such commerce...**[33]

Under the FELA, commerce by rail (a transporation function) is required of both the plaintiff worker and the defendant railroad by the express terms of the Act. It is evident from the language of the FELA that Congress realized, when it fashioned these provisions, that the basic if not exclusive function of a railroad is to

31. 45 U.S.C. §§ 51 et seq..
32. *See, e.g., O'Donnell, supra* at note 30; and *Buzynski v. Luckenbach Steamship Co.*, 277 U.S. 226, 48 S.Ct. 440, 72 L.Ed. 860 (1928).
33. 45 U.S.C. § 51 (emphasis added).

transport cargo or passengers from one place to another.[34] The courts must look for some connexity between an FELA claimant's employment and the transporation function of the carrier because that is precisely what the FELA requires statutorily.[35]

However, in marked contrast, the language of the Jones Act provides that:

> Any seaman who shall suffer personal injury **in the course of his employment** may...maintain an action for damages at law...and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply...[36]

The Jones Act is totally void of any mention of commerce or transportation. Moreover, this Court has consistently conferred Jones Act coverage to workers, assigned to vessels, who were not engaged in any transportation functions.

In *Gianfala v. Texas Co.*[37], this Court reinstated a jury's finding that a submersible drilling barge resting on the bottom of the bay was a Jones Act vessel, and that a worker killed while loading pipe on the drilling barge was a seaman.

---

34. *See also Kieronski v. Wyandotte Terminal Railroad Co.*, 806 F.2d 107 (6th Cir. 1986); and *Lone Star Steel Co. v. McGee*, 380 F.2d 640 (5th Cir.) *cert. denied*, 389 U.S. 977, 88 S.Ct. 480, 19 L.Ed. 2d 471 (1967).
35. *See Shanks v. Delaware, L. & W. R. Co.*, 239 U.S. 556, 36 S.Ct. 188, 60 L.Ed. 436 (1916); and *Reed v. Pennsylvania Railroad Co.*, 351 U.S. 502, 76 S.Ct. 958 (1956).
36. 46 U.S.C. § 688 (a) (emphasis added).
37. 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775 (1955).

In *Senko v. LaCrosse Dredging Corp.*[38], this Court affirmed a jury's finding of vessel status of a dredge and seaman status of a laborer on the dredge who had no duties connected with the moving of the dredge, but rather, his primary duty was to maintain the dredge during its anchorage and for its future trips.

In *Grimes v. Raymond Concrete Pile Co.*[39], this Court affirmed a jury's finding of seaman status of a pile driver who drowned when he fell out of a life ring used to carry him from a tug to an offshore structure after he had been working on a construction barge.

In *Butler v. Whiteman*[40], this Court affirmed a jury's finding of seaman status of a laborer who did odd jobs around his employer's wharf and was last seen alive running across the barge to the tug, both owned by his employer, and both lashed to the wharf and withdrawn from navigation because the tug was inoperable.

Circuit court jurisprudence likewise contains a plethora of cases conferring Jones Act status to seamen working aboard unconventional and special mission craft.[41]

---

38. 350 U.S. 370, 77 S.Ct. 415, 1 L.Ed.2d 404, *rehearing denied*, 353 U.S. 931, 77 S.Ct 716, 1 L.Ed. 2d 724 (1957).
39. 356 U.S. 252, 78 S.Ct. 687, 688, 2 L.Ed. 2d 737 (1958).
40. 356 U.S. 281, 78 S.Ct. 734, 2d L.Ed. 2d 754 (1958).
41. *See, e.g., Harney v. Moore*, 359 F.2d 649 (2d Cir. 1966) (reversal of the trial court's dismissal of a Jones Act claim by a plaintiff injured in a fall from a construction barge used on a bridge-building project where the plaintiff's duties were to keep a cofferdam pumped out and to keep water out of the barge); *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959) (a roughneck on a submersible drilling barge is a seaman); *McDermott v. Boudreaux, supra* at note 28 (a welder on a pipelaying barge is a Jones Act seaman); *Hicks v. Ocean Drilling & Exploration Co.*, 512 F.2d 817 (5th Cir. 1975), *cert. denied, sub nom. Hughes v. Ocean Drilling & Exploration Co.*, 423 U.S. 1050,

It is well settled that "vessel" status for Jones Act purposes is not limited to vessels engaged solely as a means of transport on water. The mere capacity to provide transportation over water suffices in determining Jones Act "vessel" status, a critical component of the associated "seaman" status inquiry.[42] Obviously, it would be patently incongruous to require a seaman to perform transportation functions when, by congressional definition found in 1 U.S.C. § 3, the vessel on which he is working need not even be used for that purpose.

(5) THE "LUCRATIVE REMEDY" MYTH

The petitioner alleges that the respondent's claims are motivated by inventive plaintiff attorneys who are attempting to obtain the more "lucrative" benefits afforded by the Jones Act. Assuming, anguendo, this is correct, then the petitioner's brief is merely another argument by inventive defense counsel to restrict Jones Act coverage and substitute it for "less lucrative" LHWCA remedies. The truth is, each Act has disadvantages and neither Act is necessarily more lucrative. For example, if a Jones Act employee is injured or killed under circumstances where there is no liability, then, unquestionably, coverage under the LHWCA would be preferable. Illustratively, if a Jones Act employee lost

---

96 S.Ct. 777, 46 L.Ed. 2d 639 (1976) (laborers on a submersible oil storage facility are Jones Act seamen); *Searcy v. E.T. Sider*, 679 F.2d 614 (6th Cir. 1982) (reversal of the granting of a partial summary judgment dismissing a Jones Act claim brought by the widow of a night watchman who drowned after an apparent fall from one of several barges he was assigned to check every two hours, as part of his duties, and to keep the pumps on the barges fueled); and *Slatton v. Martin K. Eby Construction Co., Inc., supra* at note 28 (a welder on a floating construction barge is a Jones Act seaman).

42. *See, e.g., Robison, supra*, at note 3; and *McDermott supra*, at note 28.

both lower extremities in an accident involving no liability, once maximum medical cure was reached, the employee would be entitled to no benefits whatsoever, whereas under the LHWCA, substantial weekly payments and medical benefits would be available. Coverage under the Jones Act is a legislative mandate, not the product of "inventive" counsel.

CONCLUSION

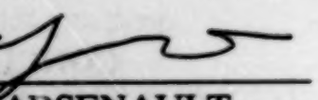
The Jones Act is remedial legislation. With its enactment, Congress did not intend to create a static remedy, but instead one which would be liberally construed in favor of enlarging the protection of seamen commensurate with the responsibility of the maritime industry toward its vessel based workers. Cognizant of the prevailing test for seaman status, Congress has declined to modify the existing rule despite several opportunities to do so.

The petitioner would have this Court adopt the *Johnson* test, a new and unorthodox approach by a circuit which acknowledges its relative lack of experience with seaman status issues. Even the petitioner concedes that the Seventh Circuit stands alone with its frontal assault of the current rule. The Seventh Circuit's test is irreconcilable with this Court's decisions and repugnant to clearly articulated legislative intent. The transportation employment function required by *Johnson* has no statutory support. In fact, neither the language of the Jones Act nor this Court's rulings require transportation related functions for seaman or vessel status. The *Johnson* case should be recognized for the aberration it is.

This Honorable Court should not abandon its longstanding test as currently embodied in *Robison*. The existing rule should be recognized and applied as the uniform national rule.

Respectfully submitted,

NEBLETT, BEARD & ARSENAULT



BY: _____
RICHARD J. ARSENAULT
Post Office Box 1190
Alexandria, Louisiana 71309-1190
Telephone: (318)487-9874
BAR ROLL NUMBER 2563
Counsel of Record for
Amicus Curiae (LTLA)

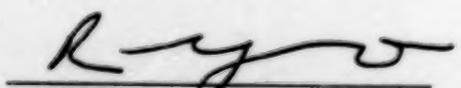
PROOF OF SERVICE BY MAIL

I certify that three copies of this Amicus Curiae Brief on the Merits in Support of Respondent have been mailed, postage prepaid properly addressed, to:

James B. Doyle
Voorhies & Labbe'
P.O. Box 3527
Lafayette, LA 70502

J. B. Jones, Jr.
Jennifer Jones Bercier
Jones, Jones, & Alexander
P.O. Drawer "M"
Cameron, LA 70631

Alexandria, Louisiana, this the 4th day of September, 1990.



RICHARD J. ARSENAULT